

EXHIBIT A

FILED: ERIE COUNTY CLERK 04/22/2015 01:49 PM

INDEX NO. 805175/2015

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 04/22/2015

STATE OF NEW YORK : COUNTY OF ERIE
SUPREME COURT

DENNIS D'ANDREA
1691 Girdle Road
Elma NY 14059,

Plaintiff,

SUMMONS

v.

Index No.

ENCOMPASS INSURANCE COMPANY
OF AMERICA
2775 Sanders Road
Northbrook IL 60062,

and

ALSTATE INSURANCE COMPANY
2775 Sanders Road
Northbrook IL 60062,

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to appear and answer the Complaint attached hereto, in this action, by serving a copy of your Answer on the Plaintiff's attorney within twenty (20) days after the service of this Summons and Complaint, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons and Complaint is not personally delivered to you within the County of Erie, State of New York); and in case of your failure to appear and answer, Judgment will be taken against you by default for the relief demanded in the Complaint attached hereto.

Erie County is designated as the place of trial. The bases of venue are A) the Plaintiff's place of residence, (B) the location of the loss which is the subject of the underlying action, and (C) the location of where the insurance policy was entered.

DATED: April 21, 2015
West Seneca, NY



LAW OFFICE OF RALPH C. LORIGO

Jon F. Minear, Esq.
Attorneys for Plaintiff
101 Slade Avenue
West Seneca NY 14224
(716) 824-7200

STATE OF NEW YORK : COUNTY OF ERIE
SUPREME COURT

DENNIS D'ANDREA,

Plaintiff,

VERIFIED COMPLAINT

v.

Index No.

ENCOMPASS INSURANCE COMPANY OF
AMERICA, and ALSTATE INSURANCE
COMPANY,

Defendants.

The Plaintiff, Dennis D'Andrea, by and through his attorneys, the Law Office of Ralph C. Lorigo, as and for a Complaint against the Defendants, Encompass Insurance Company of America, and Alstate Insurance Company, alleges as follows:

1. At all times hereinafter mentioned, the Plaintiff, Dennis D'Andrea, was and is a natural person residing in the County of Erie and State of New York.
2. Upon information and belief, at all times hereinafter mentioned, the Defendants, Encompass Insurance Company of America and Alstate Insurance Company, were and are foreign insurance companies (A) registered with the New York State Department of Financial Services, and (B) authorized to conduct business selling and providing various types of insurance within the State of New York.

**AS AND FOR A CAUSE OF ACTION AGAINST THE DEFENDANTS,
THE PLAINTIFF ALLEGES AS FOLLOWS:**

3. Repeats and realleges each and every allegation previously made as if restated herein.

4. The Plaintiff was the owner of the real property commonly known as 6216 Broadway, located in the County of Erie and State of New York (the "Property").

5. The Plaintiff used the Property as a rental, leasing the upper and lower units to willing tenants.

6. For the policy period of February 19, 2013 through February 19, 2014, the Defendants issued a deluxe package insurance policy to the Plaintiff, including, but not limited to, a fire protection policy with Policy No. 261428701 (the "Policy"). (Exhibit "A").

7. Pursuant to the Policy, the Defendants agreed to provide insurance coverage, including, but not limited to, fire protection at the Property; specifically, the Policy provides, in relevant part, as follows:

12. **Scheduled Location** means a premises owned by you that is:

- a. Rented to others; or
- b. Occupied by you;

which is:

- a. Shown in the Coverage Summary" (Exhibit "A").

8. The Scheduled Location is the Property, which is set forth in the Coverage Summary. (Exhibit "A").

9. As such, the Policy covers the Property.

10. The Policy further provides that property damage "means physical injury to or **destruction of real property or tangible personal property, including loss of use of the property.**" (Exhibit "A").

11. Further, the Policy provides for loss of rents and states that “[i]f a loss covered under Property Coverage Dwelling makes that part of your Scheduled Location rented to others or held for rental uninhabitable, **we cover its fair rental value**, less any expenses that do not continue . . .” (Exhibit “A”).

12. On April 27, 2013, a fire occurred at the Property, rendering the Property uninhabitable (the “Fire”).

13. The Fire resulted in a total loss, essentially destroying the Property.

14. On April 27, 2013, the Policy was in full force and effect.

15. The Plaintiff timely notified the Defendants of the Fire at the Property.

16. Pursuant to the Policy, a dwelling fire, such as the one that occurred herein, is the type of claim that is covered by the Policy.

17. Pursuant to the Policy, the Property is covered (A) for dwelling fires up to \$187,500.00, (B) for tangible property contained therein for \$18,750.00, and (C) for reasonable rental value. (Exhibit “A”).

18. Pursuant to the Policy, the total coverage amounts to \$206,250.00, plus reasonable rental value.

19. The Defendants have an obligation to provide insurance coverage to the Plaintiff, plus reasonable rental value with regard to the Fire damage.

20. On or about December 23, 2013, the Defendants denied coverage under the Policy (Exhibit “B”).

21. As a result of the denial, the Defendants have breached their obligations pursuant to the Policy.

22. As a result of the breach, the Plaintiff is entitled to a judgment declaring that the Defendants are required to provide the Plaintiff with insurance coverage, plus reasonable rental value of the units concerning the Fire damage to the Property.

23. The Plaintiff does not have an adequate remedy at law.

24. The Plaintiff has not made any prior application for the relief requested herein.

25. It is the Plaintiff's belief that he has made out a cause of action for a declaratory judgment.

WHEREFORE, the Plaintiff demands judgment against the Defendants as follows:

A. An Order declaring that the Defendants are required to provide the Plaintiff with insurance coverage with regard to the Fire damage incurred at the Property; and

B. A judgment granting the Plaintiff such other, further and different relief as the Court may deem just, equitable and proper, including an award of reasonable attorney's fees, costs and disbursements of this action.

DATED: April 21, 2015
West Seneca, NY



JON F. MINEAR, ESQ.

VERIFICATION

Dennis D'Andrea, being duly sworn deposes and says that (A) he is the Plaintiff in this action, (B) he has read the foregoing Complaint (the "Attached Document"), (C) he knows the contents of the Complaint, and (D) the contents of the Complaint is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.


DENNIS D'ANDREA

Sworn to before me this
22 day of April, 2015


(Notary Public)

JON F. MNEAR
Notary Public, State of New York
No. 02M16251882
Qualified in Erie County
Commission Expires 12/12/2015

FILED: ERIE COUNTY CLERK 04/22/2015 01:49 PM

INDEX NO. 805175/2015

NYSCEF DOC. NO. 2

RECEIVED NYSCEF: 04/22/2015

EXHIBIT “A”

USP Deluxe - Package Renewal Policy Coverage Summary

Policyholder:
DENNIS DANDREA
1691 GIRDLE RD
ELMA NY 14059-9226

Agent:
IVANTAGE SELECT AGENCY, INC.
P. O. BOX 16112
READING, PA 19612-6112
PHONE: 800-262-0010 907-008656-0000

Policy Number: 261428701 **Policy Period:** 02/19/2013 to 02/19/2014 **12:01 AM Standard Time** **Policyholder Since:** 02/1997

Insurance Provided By:
Encompass Ins. Co. of America
2775 Sanders Rd.; Northbrook, IL 60062-6127

24 HOUR CLAIM REPORTING 800-588-7400

IMPORTANT INFORMATION ABOUT YOUR POLICY

There is important information on how your SUM limit works, in the "Special Information" section of your Coverage Summary. Please read it carefully.

There is not a trampoline located on your property.

You do not have a woodburning stove.

MOTOR VEHICLE PROTECTION

(Coverage applies only if a premium or limit is shown)

	Vehicle 1	Vehicle
Description:	2000 FORD TRUCK F350	
VIN:	1FTSX31F8YEB11659	
Rated Driver:	DENNIS DANDREA	
Use:	Pleasure	
Class Code:	801110	
Tier Level:	Tier 1	
Rating Territory:	042	
COVERAGES	LIMITS	PREMIUMS
BODILY INJURY (per person/per accident)	\$50,000/100,000	\$194.00
PROPERTY DAMAGE (per accident)	\$50,000	\$96.00
SUPPLEMENTAL SPOUSAL LIABILITY	Incl. in BI limits	\$0.00
SUPPLEMENTARY UNINSURED/ UNDERINSURED MOTORISTS (SUM) (per person/per accident)	\$25,000/50,000	\$See Below
PERSONAL INJURY PROTECTION (No-Fault):		
Mandatory Basic Economic Loss \$200 Deductible	\$50,000	\$51.00
Work Loss Coordination Additional Personal Injury Protection	\$50,000	\$52.00

261428701


President


Secretary

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USP Deluxe - Package Renewal Policy Coverage Summary

MOTOR VEHICLE PROTECTION

(Coverage applies only if a premium or limit is shown)

	Vehicle 1		Vehicle
COVERAGES	LIMITS	PREMIUMS	LIMITS
Aggregate No-Fault Benefits Available	\$100,000		
PIP Coverages Limits:			
Maximum Monthly Work Loss	\$3,000		
Other Necessary Expenses (Per Day)	\$63		
Death Benefit	\$2,000		
COMPREHENSIVE (Comp)	\$500 Deductible	\$179.00	
FULL COVERAGE	Per Endorsement	Included	
WINDOW GLASS			
TOWING	\$50	Included	
EXTENDED TRANSPORTATION			
Rental Reimbursement	\$30/900		
	Per Day/Maximum	Included	
Trip Interruption	\$100/500		
	Per Day/Maximum	Included	
Emergency Transportation	\$20	Included	
Premium Per Vehicle		\$572.00	

Premium for "SUM" coverage is shown separately.

DISCOUNTS AND CHARGES	Vehicle 1
Loss Free Discount	Applied
Passive Restraint Discount (Driver and Passenger side)	Applied
No-Fault Work Loss Coordination Discount	Applied
TOTAL VEHICLE(S) PREMIUMS AND CHARGES	

Discounts And Charges For All Vehicles

Package Discount	Applied
Supplementary Uninsured/Underinsured Motorists (SUM) Premium for all Vehicles	\$46.00
Motor Vehicle Law Enforcement Fee \$10.00 per vehicle	Total Fee \$10.00

Total Premium Savings for the Following Discounts:

\$16.00	Passive Restraint
\$4.00	No-Fault Work Loss Coordination

Your Total Premium For All Vehicles	\$628.00
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DRIVER INFORMATION

Name	Years Licensed	Date of Birth
01 DENNIS DANDREA	37	/1959

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USP Deluxe - Package Renewal Policy Coverage Summary

HOME PROTECTION

(Coverage applies only if a premium or limit is shown)

POLICY LEVEL TIER: TIER 2

Residence 1 Description: 1691 GIRDLE RD, ELMA, NY 14059

COVERAGES	LIMITS	PREMIUMS
PROPERTY LOCATION LIMIT	\$474,200	\$639.00
Property Deductible	\$1,000	
Your location limit is 200% of the estimated residence value of \$ 237,100		

The location limit is the total amount of insurance on your dwelling, contents and other structures at this location.

Note: No more than 20% of the estimated residence value shown above will be available to pay for Other Structures

LOSS OF USE	Per Policy	\$Included
PERSONAL LIABILITY	\$100,000	\$Included
MEDICAL EXPENSES	\$5,000	\$Included

Total Residence Premium	\$639.00
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MORTGAGEE/OTHER INTERESTED PARTIES INFORMATION

Residence 1	Loan Number	Type of Interest
ERIE COUNTY DEPARTMENT OF ENVIRONMENTAL & PLANNING 95 FRANKLIN ST BUFFALO NY 14202-3925		Mortgagee

DISCOUNTS AND CHARGES

Fire Alarm Discount (local, smoke detectors, dead bolt locks, fire extinguisher)	Applied
Renewal Discount	Applied

TOTAL HOME(S) PREMIUMS AND CHARGES

Discounts And Charges For All Homes	
Package Discount	Applied
Your Total Premium For All Homes	\$639.00

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USP Deluxe - Package Renewal Policy Coverage Summary

FIRE PROTECTION

(Coverage applies only if a premium or limit is shown)

Dwelling 2 Description: 6216 BROADWAY, LANCASTER, NY 14086

COVERAGES	LIMITS	PREMIUMS
PROPERTY LOCATION LIMIT	\$206,250	\$647.00
Property Deductible	\$1,000	
Your location limit represents combined dwelling and other structures value of:		
\$ 187,500		
plus Tangible Personal Property value of \$ 18,750		

The location limit is the total amount of insurance on your dwelling, contents and other structures at this location.

Note: No more than 20% of the estimated residence value shown above will be available to pay for Other Structures.

PERSONAL LIABILITY	\$100,000	Included
MEDICAL EXPENSES	\$5,000	Included

Total Dwelling Premium	\$647.00
------------------------	----------

MORTGAGEE/OTHER INTERESTED PARTIES INFORMATION

Dwelling 2	Loan Number	Type of Interest
ALBERT D'ANDREA		Insurable Interest
1691 GIRDLE RD		
ELMA NY 14059-9226		

DISCOUNTS AND CHARGES

Fire Alarm Discount (local, smoke detectors, dead bolt locks, fire extinguisher)	Applied
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TOTAL DWELLING(S) PREMIUMS AND CHARGES

Your Total Premium For All Dwellings	\$647.00
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GENERAL POLICY INFORMATION

The coverages and limits shown here are subject to the restrictions, conditions, and exclusion of the policy and its endorsements.

YOUR POLICY IS SUBJECT TO THE FOLLOWING FORMS AND ENDORSEMENTS

G1-14826-E (08-10)	PERSONAL INJURY PROTECTION COVERAGE
	- NEW YORK
G1-14827-C (08-10)	ADDITIONAL PERSONAL INJURY PROTECTION

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USP Deluxe - Package Renewal Policy Coverage Summary

GENERAL POLICY INFORMATION

YOUR POLICY IS SUBJECT TO THE FOLLOWING FORMS AND ENDORSEMENTS

G1-15368-A (08-95)	COVERAGE - NEW YORK AMENDMENT OF GENERAL PROVISIONS - NEW YORK
G1-17788-A (11-95)	NEW YORK TRANSITION ENDORSEMENT - DELUXE HOME SEGMENT
G1-17790-A (11-95)	NEW YORK TRANSITION ENDORSEMENT - DWELLING FIRE SEGMENT
G1-18808-F (05-09)	NEW YORK AMENDMENT OF MOTOR VEHICLE PROVISIONS
G1-28744-A (10-97)	COVERAGE CLARIFICATION ENDORSEMENT AND NOTICE
G1-32351-A (08-98)	EXTENDED TRANSPORTATION COVERAGE
G-18534-A (09-93)	DELUXE-HOME
G-18538-A (09-93)	INTRODUCTION
G-18540-A (09-93)	GENERAL PROVISIONS
G-18542-A (09-93)	DWELLING FIRE
G-20612-B (11-95)	NEW YORK - MOTOR VEHICLE SEGMENT
G-20814-G (05-09)	AMENDMENT OF PROPERTY PROVISIONS - NEW YORK
*G-20620-C (06-96)	UNINSURED MOTORISTS ENDORSEMENT - NEW YORK
G-20623-B (07-98)	SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS ENDORSEMENT-NEW YORK (SPLIT)
G-20627-A (12-93)	FULL COVERAGE WINDOW GLASS - NEW YORK
G-44660-C (12-01)	RENTAL VEHICLE COVERAGE ENDORSEMENT - NEW YORK

PLEASE READ THIS IMPORTANT INFORMATION CONCERNING YOUR POLICY

G1-29135-G (02-03)	IMPORTANT INFORMATION ABOUT REPAIRING YOUR VEHICLE
G1-33841-C (04-08)	IMPORTANT INFORMATION ABOUT YOUR PROPERTY DEDUCTIBLES
*G1-40173-C (02-09)	ENCOMPASS INSURANCE PRIVACY POLICY FOR CUSTOMERS
*G-15371-B (05-01)	ABOUT YOUR NEW YORK VEHICLE IDENTIFICATION CARDS
*G-16435-D (04-01)	AUTOMOBILE DEDUCTIBLE OPTIONS - NEW YORK
*G1-70271-A (08-01)	REAL PROPERTY WRITTEN DAMAGE ESTIMATE - NEW YORK
G1-70357-A (12-01)	IMPORTANT INFORMATION ABOUT YOUR MOTOR VEHICLE POLICY
*G1-70664-A (12-02)	PERSONAL IMPORTANT INFORMATION ABOUT YOUR PROPERTY POLICY
*G1-70777-A (01-03)	IMPORTANT NOTICE - NEW YORK SUPPLEMENTAL SPOUSAL LIABILITY INSURANCE
G1-70778-B(03-09)	U.S. MILITARY PERSONNEL ON ACTIVE DUTY- THIRD PARTY DESIGNEE SELECTION FORM
*G1-71322-A (02-05)	IMPORTANT NOTICE

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USP Deluxe - Package Renewal Policy Coverage Summary

GENERAL POLICY INFORMATION

PLEASE READ THIS IMPORTANT INFORMATION CONCERNING YOUR POLICY

*G1-71729-A (02-06)	IMPORTANT NOTICE ABOUT CONSUMER REPORTS
G1-73010-A (07-08)	IMPORTANT INFORMATION ABOUT FLOOD INSURANCE AND YOUR POLICY
*G1-73011-A (04-08)	IMPORTANT INFORMATION ABOUT WINDSTORM DEDUCTIBLES AND ADDITIONAL CREDITS
*G1-74056-A (11-08)	IMPORTANT NOTICE
*G1-74503-A (08-09)	IMPORTANT NOTICE ABOUT RENEWAL DOWN PAYMENTS
*G1-74819-A (07-10)	IMPORTANT NOTICE
*G1-74828-A (09-10)	DISCLOSURE REGARDING RENTAL REIMBURSEMENT COVERAGE
*G-18559-B (07-98)	RENEWAL INFO - SUPPLEMENTARY UNINSURED/ UNDERINSURED MOTORISTS (SUM) COVERAGE
*G-19155-D (04-01)	IMPORTANT INFORMATION CONCERNING AUTOMOBILE PREMIUM DISCOUNTS
*G-33347-D (05-01)	NEW YORK STATE INSURANCE IDENTIFICATION CARD
*G-42346-J (12-10)	RATING INFORMATION - NEW YORK
*G-44661-C (03-09)	RENTAL VEHICLE COVERAGE NOTICE
*G-53624-H (07-12)	TO ALL OPERATORS OF MOTOR VEHICLES IN NEW YORK STATE
*G-58207-I (08-09)	NEW YORK MOTOR VEHICLE ACCIDENT PREVENTION COURSE DISCOUNT

The forms marked with "*" reflect revised or new forms included with this coverage summary.

SPECIAL INFORMATION

The following paragraph explains how your Supplementary Uninsured Motorists (SUM) limit(s), displayed under the Motor Vehicle Coverages section of your Coverage Summary, will be applied in the event of a loss:

The maximum amount payable under SUM coverage shall be the policy's SUM limit(s) reduced and thus offset by motor vehicle bodily injury liability insurance policy or bond payments received from, or on behalf of, any negligent party involved in the accident as specified in the SUM endorsement.

SUMMARY OF YOUR POLICY'S PREMIUMS

Coverage Type	Premium
Motor Vehicle	
Home	\$628.00
Dwelling Fire	\$639.00
	\$647.00
Total For All Exposures	\$1,914.00

For any insurance need, or questions on your policy, please call 1-800-262-0010

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USP Deluxe - Package Renewal Policy Coverage Summary

AGENT'S USE ONLY

Policy Level		
Renewal Number	16	
Vehicle Level		
	Veh 1	
Territory	42	
Symbol - Comprehensive	16	
Performance	STD	
Sex	M	
Marital Status	S	
Rate Level		
Residence Level		
	Res 1	Dwl 2
Territory	035	035
Coverage Type	H03	DP3
Miles to Fire Department	05	05
Feet to Hydrant	1000	1000
Protection Class	04	04
Construction	F	F
Year Built	1985	1945
Heating Upgrade	1985	
Plumbing Upgrade	1985	
Wiring Upgrade	1985	
Roof Upgrade	1985	
Residence Type	Primary	Second
Occupancy	Insured	Non-Ins
Square Feet	01500	01200

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Your Policy

DWELLING FIRE

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Your Policy

DWELLING FIRE

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Your Policy

DWELLING FIRE

DEFINITIONS

In this "DWELLING FIRE" Segment, certain words and phrases are italicized, which identifies them as having specific meaning for this "DWELLING FIRE" Segment. The meaning of each italicized word or phrase is provided in the Definitions below.

1. **Bodily Injury** means physical bodily harm, including sickness or disease. This includes required care, loss of services and death resulting therefrom. **Bodily Injury** does not include any communicable disease, such as:
 - a. Any venereal disease;
 - b. Herpes;
 - c. Acquired Immune Deficiency Syndrome (AIDS);
 - d. AIDS Related Complex (ARC);
 - e. Human Immunodeficiency Virus (HIV);
 or any resulting or related symptom, effect, condition, disease or illness.
2. **Business** includes trade, profession or occupation, farming or ranching or any activity aimed at providing a product or a service with the anticipation of economic gain from the enterprise. The providing of home day care services in exchange for monetary or other compensation, such as services to other than a relative of a **covered person**, is considered a **business** pursuit.
3. **Covered Person(s)** means you and the following residents of your household:
 - a. Your **family members**;
 - b. Any other person under the age of 21 who is in the care of any person named above;

Under Liability Coverage – Dwelling **covered person** also means:

- c. With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by or

in the care of you or any person included in 3.a. or 3.b. above. A person or organization using or having custody of these animals or watercraft in the course of any **business** or without the consent of the owner is not a **covered person**;

- d. With respect to any motor vehicle to which this "DWELLING FIRE" Segment applies:
 - (1) Persons while engaged in your employ or that of any person included in 3.a. or 3.b. above; or
 - (2) Other persons using the vehicle on an **insured location** with your permission.
4. **Family Member** means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

For the purposes of this definition, to be considered a resident of your household when evaluating coverage for a loss, a person must have been actually residing in your household on the date the loss occurred. However, your:

- a. Son;
- b. Daughter;
- c. Ward; or
- d. Foster child;

In the United States military or away at school will be considered a resident of your household unless he or she has demonstrated an intent to reside elsewhere permanently.

5. **Insured Location** means:

- a. Your **scheduled location**;
- b. The part of any other premises, other structures and grounds used by you as a residence that is shown in the Coverage Summary, or acquired by you during the policy period for your use as a residence; provided you ask us to insure it within 30 days after you become the owner and coverage is agreed to by us.

Your Policy

- c. Any premises used by you in connection with the premises included in 5.a. or 5.b. above;
 - d. Any part of a premises not owned by you or any **covered person** but where you or any **covered person** are temporarily residing;
 - e. Vacant land owned by or rented to you or any **covered person** other than farm land;
 - f. Land owned by or rented to a **covered person** on which a one to four family dwelling is being built as a residence for a **covered person**;
 - g. Individual family cemetery plots or burial vaults of you or any **covered person**; or
 - h. Any part of a premises occasionally rented to you or any **covered person** for other than **business purposes**.
6. **Medical Expenses** means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services.
7. **Occupying** means in, upon, or getting in, out, on or off.
8. **Occurrence** means an event, or a series of related events resulting from continuous or repeated exposure to the same general conditions, that causes **bodily injury** or **property damage** during the policy period.
9. **Property Damage** means physical injury to or destruction of real property or tangible personal property including loss of use of the property.
10. **Residence Employee** means your employee or an employee of any **covered person** in your household who performs duties in connection with the maintenance or use of your **residence premises**, including household or domestic services, or who performs duties elsewhere of a similar nature not in connection with any **covered person's business**.
11. **Residence Premises** means a dwelling or that part of any other building in which you reside and which is shown as a dwelling in the Coverage Summary.
12. **Scheduled Location** means a premises owned by you that is:
- a. Rented to others; or
 - b. Occupied by you;
- which is:
- a. Shown in the Coverage Summary; or
 - b. Acquired by you during the policy term; and
 - (1) You ask us to insure it within 30 days; and
 - (2) Coverage is agreed to by us.
13. **Theft** refers to property which has been stolen, attempted theft and the loss of property from a known location when it is likely that the property has been stolen.
14. **Total Loss** means that the cost to replace the covered real property is equal to or less than the cost of repairs plus the cost of any **Additional Living Expense, Fair Rental Value, Building Ordinance Increased Costs** (when purchased) and **Debris Removal**.

PROPERTY COVERAGE—DWELLING

REAL PROPERTY—INSURING AGREEMENT

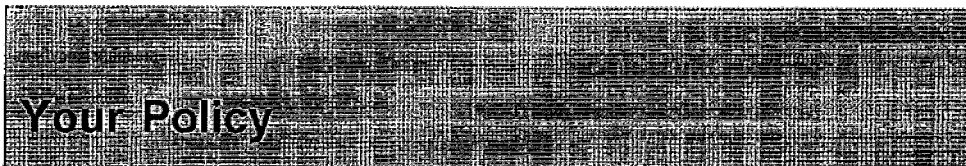
1. Dwelling Owners—We cover:

- a. The dwelling on your **scheduled location**;
- b. Other structures on your **scheduled location**.

2. Condominium and Cooperative Owners—We cover:

- a. The alterations, appliances, fixtures and improvements which are part of the building contained within your **scheduled location**;
- b. Items of real property which pertain exclusively to your **scheduled location**;
- c. Real property which is your insurance responsibility under a corporation or association of property owners agreement or state law;
- d. Structures owned solely by you, other than your **scheduled location**, at the location of your **scheduled location**.

The limit of liability for 2.a., 2.b. and 2.c. is shown on the Coverage Summary as "Building



Additions and Alterations" and will be at least 10% of the property limit shown in the Coverage Summary for Tangible Personal Property.

REAL PROPERTY – PROPERTY NOT COVERED

We do not cover:

1. Other structures on your *scheduled location*:
 - a. Used in whole or in part for business; or
 - b. Rented or held for rental to any person not a tenant of your *scheduled location* unless used solely as a private garage.
2. Land.

REAL PROPERTY – LIMIT OF LIABILITY

Covered losses are settled on a replacement cost basis (without deduction for depreciation) subject to the following:

1. Payment will not exceed the smallest of:
 - a. The amount that we could reasonably be expected to pay to have the property repaired to its condition immediately prior to loss;
 - b. The actual cost to replace the real property or any parts of it; or
 - c. The aggregate property limit shown in the Coverage Summary for the dwelling.
2. If you have:
 - a. Maintained coverage on the real property at 100% of its full replacement cost by paying renewal premium to reflect the then current replacement cost. The current replacement cost of the real property will be based on the residential construction cost index provided to us by a major appraisal company; and
 - b. Notified us within 90 days of the start of any alterations to the real property which increase the replacement cost of the real property by 5% or more;

Then, if at the time of loss the dwelling value indicated in the Coverage Summary is less than the current replacement cost, we will:

- a. Increase the dwelling value to equal the smallest of:

- (1) The current replacement cost; or
- (2) 120% of the dwelling value shown on the Coverage Summary;

- b. Also increase the aggregate property limit by the same percentage applied to the dwelling value; and
- c. Adjust the policy premium from the time of loss for the remainder of the policy term based on the increased limit of liability.

"Current replacement cost" does not include any additional costs necessary to comply with any ordinance or law that regulates the construction, repair or demolition of the property.

3. We will pay no more than the actual cash value of the damage until actual repair or replacement is complete. Once actual repair or replacement is complete, we will settle the loss according to the replacement cost provisions above.

However, if the cost to repair or replace the damage is both:

- a. Less than 5% of the amount of insurance shown in the Coverage Summary; and
- b. Less than \$3,000;

we will settle the loss according to the replacement cost provisions above, whether or not actual repair or replacement is complete.

4. If the replacement premises is not at the same location, covered losses will be settled on an actual cash value basis (with deduction for depreciation).
5. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage on an actual cash value basis. You may then make claim within one year after loss for any additional liability on a replacement cost basis.

REAL PROPERTY – COVERED PERILS

We cover direct physical loss to property described in *Real Property – Insuring Agreement*, unless the loss is not covered under *Property Coverage – Losses We Do Not Cover*.

Your Policy

TANGIBLE PERSONAL PROPERTY—INSURING AGREEMENT

We cover tangible personal property owned or used by any **covered person** while it is on the **scheduled location**.

At your request, we cover tangible personal property owned by a guest or a **residence employee** while the property is on the **scheduled location**.

TANGIBLE PERSONAL PROPERTY—PROPERTY SPECIAL LIMITS

To keep your premium as low as possible, we have limited the amount we will pay for certain categories of tangible personal property. We do not provide coverage under these provisions for articles separately described and/or specifically insured elsewhere in this policy.

The limit shown for each numbered category is the most we will pay for that category per loss. If we could pay for the same item under more than one category, we will pay under only the highest applicable category.

Category

1. \$ 200 . . . On money, bank notes, bullion, gold (except goldware), silver (except silverware), platinum, coins and medals.
2. \$1,000 . . . On securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, stamps, personal records, passports and tickets. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists.

This limit includes the cost to research, replace or restore the lost or damaged material.
3. \$2,500 . . . On property at your **residence premises** used in **business**, but if the **business** property is away from your **residence premises** the most we will pay is \$1,250.
4. \$2,000 . . . For loss by **theft** of firearms.
5. \$1,000. . . For loss to trading cards, subject to a maximum amount of \$250 per card.
6. \$2,500 . . . For loss by **theft** of silverware, silver-plated ware, goldware, gold-plated ware and pewterware.

7. \$2,500 . . . For loss by:
 - a. **Theft** of jewelry, watches, precious and semi-precious stones, furs, garments trimmed with fur or consisting primarily of fur; or
 - b. Misplacing or losing of jewelry, watches, precious and semi-precious stones.

8. \$1,000 . . . For loss to watercraft including their trailers, furnishings, equipment and outboard motors.

9. \$1,000 . . . For loss to trailers not used with watercraft.

TANGIBLE PERSONAL PROPERTY—PROPERTY NOT COVERED

We do not cover:

1. Animals, birds or fish.
 2. Motor vehicles or any other motorized land conveyances. This includes:
 - a. Their equipment and accessories; or
 - b. Electronic apparatus that is designed to be operated solely by use of the power from the electrical system of a motor vehicle or any other motorized land conveyance. Electronic apparatus includes:
 - (1) Accessories or antennas; or
 - (2) Tapes, wires, records, discs or other media;
- for use with any electronic apparatus.

The exclusion of property described in 2.a. and 2.b. above applies only while the property is in or upon the vehicle or conveyance.

We do cover vehicles or conveyances not subject to motor vehicle registration which are:

- a. Used to service a **covered person's** residence; or
 - b. Designed for assisting the handicapped.
3. Aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.

Your Policy

4. Property described in the Special Limits of Liability when it is at a **scheduled location** that is rented to others.
5. Property of roomers, boarders or other tenants, except property of roomers and boarders related to a **covered person**.

6. **Business** data stored in:

- a. Books of account, drawings, other paper records; or
- b. Electronic data processing tapes, wires, records, discs or other software media.

We do cover the cost of blank or unexposed records and media, and of pre-recorded computer programs available on the retail market.

7. Credit cards or fund transfer cards.
8. Property on a premises regularly rented or held for rental to others by a **covered person**.

TANGIBLE PERSONAL PROPERTY – LIMIT OF LIABILITY

1. Covered losses will be settled on an actual cash value basis (with deduction for depreciation) but not exceeding the cost to repair or replace up to the property limit shown in the Coverage Summary.

At our option, we may repair or we may replace with a new item of similar or like kind and quality.

2. Loss To A Pair Or Set – In case of loss to a pair or set we will:
 - a. Repair or replace any part to restore the pair or set to its value before the loss; or
 - b. Pay the difference between the actual cash value of the property before and after the loss.
3. The limit of liability for covered tangible personal property located on a **scheduled location** is shown on the Coverage Summary and will be at least 10% of the Dwelling limit in the Coverage Summary.
4. The limit of liability for tangible personal property usually located at a **covered person's** residence or premises is 10% of the Tangible Personal

Property limit shown on the Coverage Summary, provided such residence or premises is:

- a. Not shown on the Coverage Summary; or
- b. Shown on the Coverage Summary for **Liability Coverage** only.

Payment under this provision does not entitle the **covered person** to **Additional Property Coverages**.

5. If we make payment for a loss which is also covered under another Segment of this policy there will be no coverage under this Segment.

TANGIBLE PERSONAL PROPERTY – COVERED PERILS

We cover direct physical loss to property described in **Tangible Personal Property – Insuring Agreement** caused by a Peril listed below unless the loss is ~~excluded~~ under **Property Coverage – Losses We Do Not Cover**.

1. **Fire or lightning.**

2. **Windstorm or hail.** This peril includes loss to property contained in a building if caused by rain, snow, sleet, sand or dust, but only if the direct force of wind or hail first damages the building causing an opening through which the rain, snow, sleet, sand or dust enters.

This peril includes loss to watercraft covered under this "DWELLING" Segment and their trailers, furnishings, equipment, and outboard motors, only while inside a fully enclosed building. This limitation does not apply to row boats and canoes on the **scheduled location**.

3. **Explosion.**
4. **Riot or civil commotion.**
5. **Aircraft**, including self-propelled missiles and spacecraft.
6. **Vehicles.**
7. **Smoke**, meaning sudden and accidental damage from smoke.

This peril does not include smoke from agricultural smudging or industrial operations.

8. **Vandalism or malicious mischief.**

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Your Policy

9. **Theft**, but not including *theft* committed by a **covered person**.

This peril does not include loss caused by *theft* that occurs off of a **scheduled location** of:

- a. Property of a student who is a **covered person** while at a residence away from home if the student has not been there at any time during the 45 days immediately before the loss;
- b. Watercraft covered under this "DWELLING FIRE" Segment including their trailers, furnishings, equipment and outboard motors; or
- c. Trailers and campers covered under this "DWELLING FIRE" Segment.

10. Falling objects. This peril does not include loss to property contained in a building unless the building is first damaged by the falling object. Damage to the falling object itself is not included.

11. Weight of ice, snow or sleet which causes damage to property contained in a building.

12. Water or steam suddenly and accidentally discharged or overflowing from within your plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.

This peril does not include loss:

- a. To the system or appliance from which the water or steam escaped;
- b. Caused by or resulting from freezing except as provided in the peril of freezing below; or
- c. On your **scheduled location** caused by accidental discharge or overflow which occurs off your **scheduled location**.

In this peril, a plumbing system does not include a sump, sump pump or related equipment.

13. Cracking, burning, rupture or bulging of your air conditioner, steam or hot water heating system, or automatic fire protective sprinkler system, or an appliance for heating water. Damage to the system or appliance must be sudden and accidental. We will not cover damage caused by freezing except as indicated below.

14. Freezing of plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, but only if you have used reasonable care to keep your **scheduled location** heated or have shut off and drained the water from all plumbing and appliances if it is unoccupied.

15. Sudden and accidental damage caused by artificially generated electricity. But damage to a tube, transistor, integrated circuit or similar electronic component is not covered.

16. Volcanic eruption other than loss caused by earthquake, land shock waves or tremors. One or more volcanic eruptions within a 72-hour period will be considered as one volcanic eruption.

For property normally kept at your **residence premises**, while at a location other than a premise which you own or rent, the following perils are added:

1. Flood (concerning only rising of water);
2. Earthquake;
3. Landslide;
4. Mudslide;
5. Collision or overturn of the conveyance in which covered tangible personal property is carried.

ADDITIONAL PROPERTY COVERAGES

Unless noted otherwise, the following coverages are in addition to the aggregate property limit in the Coverage Summary.

1. **Additional Living Expense.**

- a. If a loss covered under **Property Coverage – Dwelling** makes your **residence premises** uninhabitable, we cover necessary increases in living expenses incurred by you so your household can maintain its normal standard of living. Payment is for:

- (1) The shortest time required to repair or replace the damaged portion of the premises; or
- (2) If you permanently relocate, the shortest time required for your household to settle elsewhere:

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But in no case for more than a year.

This period of time is not limited by expiration of this policy. We do not cover loss or expense due to cancellation of a lease or agreement.

- b. If your **residence premises** is uninhabitable as a result of public utility plants, transformers, switching stations or substations furnishing heat, light, power or gas to your **residence premises** being damaged or destroyed by a **Tangible Personal Property – Covered Peril**, we cover necessary increases in living expenses incurred by you so your household can maintain its normal standard of living. Payment is for a period of time not to exceed seven days. Coverage does not begin until your **residence premises** has been uninhabitable for 48 consecutive hours.

Property Coverage – Losses We Do Not Cover, exclusion 1.g. does not apply to this coverage.

2. Fair Rental Value.

If a loss covered under **Property Coverage – Dwelling** makes that part of your **scheduled location** rented to others or held for rental uninhabitable, we cover its fair rental value, less any expenses that do not continue. The maximum limit for this coverage is as follows:

- a. For other than Condominiums:
- (1) 20% of the dwelling replacement value shown in the Coverage Summary; or
 - (2) If shown on the Coverage Summary, "Increased Fair Rental Value";
- b. For Condominiums;
- (1) The Tangible Personal Property amount shown in the Coverage Summary; or
 - (2) If shown in the Coverage Summary, "Increased Fair Rental Value".

Payment is for the shortest time required to repair or replace the damaged portion of the rented premises. This period of time is not limited by expiration of this policy. We do not cover loss or expense due to cancellation of a lease or agreement.

3. Civil Authority.

- a. If a civil authority prohibits you from use of your **residence premises** as a result of direct damage to neighboring premises by what would be a covered loss under this policy, we cover the **Additional Living Expense or Fair Rental Value** loss as provided under 1. and 2. above for no more than two weeks.

The period of time under this provision is not limited by the expiration of this policy. Loss or expense due to cancellation of a lease or agreement is not covered.

- b. If a civil authority prohibits you from use of your **residence premises**, we cover the **Additional Living Expense** as provided under 1. above for no more than seven days. Coverage does not begin until the **residence premises** has been uninhabitable for 48 consecutive hours.

Property Coverage – Losses We Do Not Cover, exclusion 1.g. does not apply to this coverage.

4. Debris Removal.

We will pay your reasonable expense for the removal of:

- a. Debris of covered property for covered losses; or
- b. Ash, dust or particles from a volcanic eruption that has caused direct loss to a covered building or covered property contained in the building.

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 4% of that limit of liability is available for debris removal expense.

We will also pay your reasonable expense, up to \$500, for the removal from your **residence premises** of:

- a. Your tree(s) felled by the peril of Windstorm or Hall;

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b. Your tree(s) felled by the peril of Weight of Ice, Snow or Sleet; or

c. A neighbor's tree(s) felled by a Tangible Personal Property – Covered Peril;

provided the tree(s) damaged a covered structure. The \$500 limit is the most we will pay in any one loss regardless of the number of fallen trees.

5. Cost Of Temporary Repairs.

If a covered loss damages your **scheduled location**, we will pay on your behalf the reasonable cost for temporary repairs made to protect covered property from further damage. This coverage does not increase the limit of liability applicable to the covered property.

6. Fire Department Service Charge.

We pay up to \$1,000 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a covered loss. The deductible does not apply.

7. Collapse.

We cover direct loss to your covered real property and tangible personal property involving collapse of a building or any part of a building, but only if the collapse was caused by:

- a. Hidden decay of the structure;
- b. Hidden insect or vermin damage;
- c. Weight of contents, equipment, animals or people;
- d. Weight of rain which collects on a roof;
- e. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation; or
- f. A Tangible Personal Property – Covered Peril. These perils apply to real property and tangible personal property for this additional coverage.

Unless the loss is a direct result of the collapse of a covered building, the causes of loss a., b., c., d. and e. listed above do not apply to an awning, fence, patio, pavement, swimming pool,

underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

This coverage does not increase the limit of liability applying to the damaged covered property.

8. Loss Assessment.

We will pay up to:

- a. \$1,000; or
- b. If shown in the Coverage Summary, "Increased Loss Assessment" up to the aggregate amount shown in the Coverage Summary;

for your share of any loss assessment charged during the policy period against you by a corporation or association of real property owners. This is the most we will pay with respect to any one loss, regardless of the number of assessments.

This coverage applies only when the assessment is made as a result of direct loss:

- a. To the property, owned by all members collectively; and
- b. Caused by a covered loss other than earthquake or land shock waves or tremors before, during or after a volcanic eruption, unless modified by endorsement.

We will pay no more than \$1,000 of your assessment per unit that results from a deductible in the insurance purchased by the association of real property owners.

This coverage applies only to loss assessments charged against you as owner or tenant of the **scheduled location**.

We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body.

9. Trees and Shrubs.

We will pay up to \$2,500 for loss to your lawn, trees, plants or shrubs, on your **scheduled location**, for loss caused by:

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- a. Fire or lightning;
- b. Explosion;
- c. Riot or civil commotion;
- d. Aircraft;
- e. Vehicles not owned or operated by a resident of your **scheduled location**;
- f. Vandalism or malicious mischief; or
- g. **Theft**.

No more than \$500 of this limit will be available for any one tree, shrub or plant.

Property grown for sale or **business** purposes is not covered.

10. Glass Or Safety Glazing Material.

We cover on your **scheduled location**:

- a. The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window; and
- b. Damage to covered property by glass or safety glazing material which is part of a building, storm door or storm window.

This coverage does not include loss on your **scheduled location** if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

Loss for damage to glass will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

This coverage does not increase the limit of liability that applies to the damaged property.

11. Property Removed.

We insure covered tangible personal property against direct loss from any cause while being removed from a premises endangered by a **Tangible Personal Property—Covered Peril** and for no more than 30 days while removed. This coverage does not change the limit of liability that applies to the property being removed.

12. Materials And Supplies.

We insure materials and supplies located on or

next to your **residence premises** used to construct, alter or repair the dwelling or other structures on your **residence premises** provided loss is caused by a **Real Property—Covered Peril** and is not excluded under **Property Coverage—Losses We Do Not Cover**.

13. Builders Risk.

We insure theft in or to a dwelling under construction, or of materials and supplies for use in the construction on an **insured location**.

The limit of liability stated in the Coverage Summary is provisional. The actual amount of insurance on any date while the policy is in force will be a percentage of the provisional amount. The percentage will be the proportion that the actual value of the property bears to the value at the date of completion.

14. Newly Acquired Principal Residences

Tangible Personal Property in a newly acquired principal residence is not subject to the 10% limitation described in the **Tangible Personal Property—Limit of Liability** for the 30 days from the time you begin to move the property there.

LOSSES WE DO NOT COVER

We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

1. Real Property and Tangible Personal Property. We do not insure for loss:

- a. Caused by water damage, meaning:
 - (1) Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
 - (2) Water which backs up through sewers or drains;
 - (3) Water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure; or

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- e. (4) Water emanating from a sump pump, sump pump well or similar device designed to prevent overflow, seepage or leakage of subsurface water.

Direct loss by fire, explosion or **theft** resulting from water damage is covered.

- b. Caused by earth movement, meaning: earthquake, including land shock waves or tremors before, during or after a volcanic eruption; landslide; mudflow; mine subsidence; earth subsidence; sinkhole; or earth sinking, rising or shifting; unless direct loss by:

- (1) Fire;
- (2) Explosion; or
- (3) Breakage of glass or safety glazing material which is part of a building, storm door or storm window;

ensues, and then we will pay only for the ensuing loss.

This exclusion does not apply to loss by **theft**.

- c. Or damage due to neglect, meaning neglect of a **covered person** to use all reasonable means to save and preserve property at and after the time of a loss.
- d. Involving intentional or criminal acts of or at the direction of one or more **covered persons**, if the loss that occurs:
- (1) May reasonably be expected to result from such acts; or
 - (2) Is the intended result of such acts.

This exclusion applies regardless of whether or not the **covered person** is actually charged with, or convicted of a crime.

Or damage caused directly or indirectly by:

- (1) War, including undeclared war, civil war, insurrection, rebellion, revolution;
- (2) Warlike act by a military force or military personnel; or
- (3) Destruction or seizure or use for a military purpose;

Including any consequence of any of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

- f. Or damage arising out of a nuclear hazard meaning:

- (1) Any nuclear reaction;
- (2) Radiation; or
- (3) Radioactive contamination;

all whether controlled or uncontrolled or however caused, or any consequence of any of these.

Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion or smoke. However, direct loss by fire resulting from the nuclear hazard is covered.

- g. Or damage arising from power failure meaning the failure of power or utility service if the failure takes place off your **scheduled location**. But if a covered loss ensues on your **scheduled location**, we will pay only for that ensuing loss.

2. Real Property. We do not insure for loss:

- a. Involving collapse, other than as provided in **Additional Property Coverage, 7. Collapse.**
- b. Caused by freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, swimming pool, hot tub, foundation, retaining wall, bulkhead, pier, wharf, dock or piling.
- c. To Condominiums or Cooperatives caused by continuous or repeated seepage or leakage of water or steam over a period of time from within a plumbing, heating or air conditioning system, automatic fire protective sprinkler system or from within a household appliance.
- d. Caused by the following:
 - (1) Wear and tear, aging, marring, scratching or deterioration;
 - (2) Inherent vice, latent defect, electrical or mechanical breakdown or failure;

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- (3) Rust or other corrosion, mold, fungi, wet or dry rot;
- (4) Smog, smoke from agricultural smudging or industrial operations;
- (5) Settling, shrinking, bulging, or expansion including resultant cracking, of pavements, patios, foundations, walls, floors, roofs or ceilings;
- (6) Birds, vermin, insects, rodents or animals kept or owned by a **covered person**;
- (7) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a **Tangible Personal Property – Covered Peril**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste whether man-made or natural. Waste includes materials to be recycled, reconditioned or reclaimed.

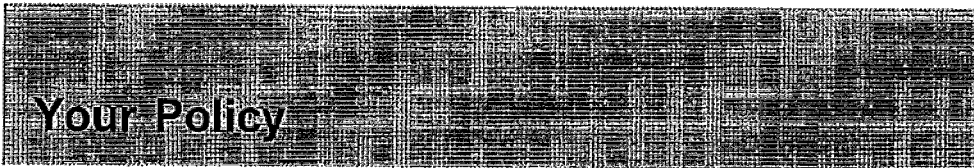
If any of these cause water not otherwise excluded to escape from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, we cover loss caused by the water. We also cover the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which this water escaped.

Under exclusions 2.a., 2.b., 2.c. and 2.d., any ensuing loss from a covered peril to covered property not excluded or excepted in this policy is covered.

- e. Caused by freezing of a plumbing, heating, air conditioning, automatic fire protective sprinkler system, a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing, while the real property is vacant, unoccupied or being constructed unless you have used reasonable care to:
 - (1) Maintain heat in the building; or

- (2) Shut off the water supply and drain the system and appliances of water.
- f. Due to increased expenses you incur from any ordinance or law regulating the construction, repair or demolition to the damaged area of your covered real property that results from a covered loss, unless your Coverage Summary Indicates "Building Ordinance Increased Costs" applies.
- g. To covered real property caused by any of the following. However, any ensuing loss not excluded or excepted in this policy is covered.
 - (1) Weather conditions. However, this exclusion applies only if weather conditions contribute in any way with a cause or event otherwise excluded to produce the loss.
 - (2) Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
 - (3) Faulty, inadequate or defective:
 - (a) Planning, zoning, development, surveying, siting;
 - (b) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (c) Materials used in repair, construction, renovation or remodeling; or
 - (d) Maintenance;
- of part or all of any property whether on or off your **scheduled location**.
- h. To property owned by a corporation or association of property owners of which the **covered person** is a shareholder or member. This exclusion does not apply to losses covered under **Additional Property Coverage, 8. Loss Assessment**.
- i. Of the first \$5,000 of damages due to vandalism or malicious mischief if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

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HOW WE SETTLE PROPERTY CLAIMS AND WHAT YOU MUST DO

1. How We Pay Claims.

We may pay for loss in money or repair or replace the damaged or stolen property. We may at our expense, return any stolen property to you.

If we return stolen property we will pay for any damage resulting from *theft*. We may keep all or part of the property at an agreed upon or appraised value.

2. Mortgage Clause.

The word "mortgagee" includes trustee. A mortgagee is applicable only to real property. If a mortgagee is named in this policy, any loss payable shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order of precedence of the mortgages.

If we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee:

- a. Notifies us of any change in ownership or occupancy, or any substantial change in risk of which the mortgagee is aware;
- b. Pays on demand any premium due, if you have neglected to pay the premium; and
- c. Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to **Appraisal, Who We Pay and Suit Against Us** apply to the mortgagee.

If the policy is canceled or nonrenewed by us, the mortgagee shall be notified at least ten days before the date cancellation takes effect.

If we pay the mortgagee for any loss and deny payment to you:

- a. We are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
- b. At our option, we may pay to the mortgagee the whole principal on the mortgage plus any

accrued interest at the time of loss. In this event, we shall receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

Subrogation shall not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

3. Insurable Interest.

We are not liable for covered property to an extent greater than:

- a. Your insurable interest in the property; or
- b. The applicable limit of liability.

4. Your Duties After Loss.

You agree to see that the following things are done after a loss. We have no duty to provide coverage under this policy unless there has been full compliance with these duties:

- a. Give prompt notice to us or our agent.
- b. Notify the police in case of loss by *theft*.
- c. Protect the property from further damage. If repairs to the property are required, you must:
 - (1) Make reasonable and necessary repairs to protect the property; and
 - (2) Keep an accurate record of repair expenses.
- d. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory.
- e. As often as we reasonably require:
 - (1) Show the damaged property before its repair or disposal, except as provided in 4.c., above;
 - (2) Provide us with records and documents we request and permit us to make copies; and
 - (3) Submit to examination under oath, while not in the presence of any other

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Your Policy

covered person and sign the same.

- f. Allow us to take samples of damaged and undamaged property for inspection, testing and analysis.
- g. Send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - (1) The time and cause of loss.
 - (2) The interest of the **covered person** and all others in the property involved and all liens on the property.
 - (3) Other insurance which may cover the loss.
 - (4) Changes in title or occupancy of the property during the term of the policy.
 - (5) Specifications of damaged property and detailed repair estimates.
 - (6) The inventory of damaged personal property described in 4.d., above.
 - (7) Receipts for Additional Living Expenses incurred and records that support the Fair Rental Value loss.
- h. Cooperate with us in the investigation or settlement of the claim.

5. Appraisal.

If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event each party will select a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will select an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where your **scheduled location** is located. The appraisers will state separately the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its own appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

We do not waive any of our rights under this policy by agreeing to an appraisal.

6. Suit Against Us.

No action can be brought unless the policy provisions have been complied with and the action is started:

- a. Within one year after the date of loss; but
- b. Not until 30 days after the proof of loss has been filed and the amount of loss has been determined.

However, the one year period is extended by the number of days between the date the proof of loss is submitted and the date the claim is denied in whole or in part.

7. Abandonment Of Property.

We need not accept any property abandoned by a **covered person**.

8. Who We Pay.

We pay you unless another party is named in the policy or is legally entitled to receive payment.

9. No Benefit To Bailee.

There is no coverage for anyone holding, storing or transporting property for a fee regardless of any other provision of this policy.

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

LIABILITY COVERAGE—DWELLING

PERSONAL LIABILITY—INSURING AGREEMENT

If a claim or suit is brought against you or any **covered person** for the following:

1. **Bodily Injury**; or
2. **Property Damage**;

caused by an **occurrence** to which this coverage applies, we will:

1. Pay on your behalf claims for which you or any **covered person** are legally liable, including pre-judgment interest awarded against you or any **covered person**, up to our limit of liability;

Your Policy

except as excluded by the provisions listed in the **Liability Coverage – Losses We Do Not Cover**; and

2. Provide defense costs for the counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when the amount we pay for damages resulting from an **occurrence** equals our limit of liability.

PERSONAL LIABILITY – LIMIT OF LIABILITY

Our total liability under **Personal Liability – Dwelling** for all damages resulting from any one **occurrence** will not be more than the limit shown on the Coverage Summary. This limit is the same regardless of the number of:

1. **Covered persons**;
2. Claims or suits made;
3. Persons who sustain injury or damage; or
4. Acts or failure(s) to act.

MEDICAL EXPENSE – INSURING AGREEMENT

We will pay **medical expenses** that are incurred or medically ascertained within three years from the date of the **occurrence** causing **bodily injury**. This coverage applies:

1. To anyone on an **insured location** with the permission of a **covered person**; or
2. To anyone off an **insured location**, if the **bodily injury**.
 - a. Arises out of a condition on the **insured location** or the ways immediately adjoining;
 - b. Is caused by the activities of you or any **covered person**;
 - c. Is caused by a **residence employee** in the course of the **residence employee's** employment by a **covered person**; or
 - d. Is caused by an animal owned by or in the care of a **covered person**.

No **covered person** for whom **medical expenses** are payable under this coverage shall recover more than once for the same **medical expense** under this or other insurance.

MEDICAL EXPENSE – LIMIT OF LIABILITY

Our total liability under **Medical Expense – Dwelling** for all **medical expense** payable for **bodily injury** to one person as the result of one accident will not be more than the limit shown in the Coverage Summary. This limit applies to each person injured.

ADDITIONAL LIABILITY COVERAGES

The following coverages are in addition to the limit of liability described in the Coverage Summary, unless noted otherwise:

1. First Aid Expenses

We will pay expenses for first aid to others incurred by any **covered person** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **covered person**.

2. Goodwill Payments.

At your request we will pay up to \$750 per **occurrence** for **property damage** to property of others caused by you or any **family member**, including intentional acts of a **family member** under the age of 13. This coverage does not apply to **property damage**:

- a. To the extent of any amount recoverable under any other section of this policy;
- b. To property:
 - (1) Owned by a **covered person**;
 - (2) Owned by or rented to a tenant of a **covered person**; or
 - (3) Owned by or rented to a resident in your household; or
- c. Arising out of:
 - (1) **Business** pursuits;
 - (2) Any act or omission in connection with a premises owned, rented or controlled by a **covered person**, other than a **residence premises**; or
 - (3) The ownership, maintenance or use of any aircraft, watercraft, motor vehicle or any other motorized land conveyance.

This exclusion does not apply to a motorized land conveyance designed for

Your Policy

recreational use off public roads, not subject to motor vehicle registration and not owned by a **covered person**.

3. Loss Assessment Coverage.

We agree to pay, up to:

- a. \$1,000; or
- b. If shown in the Coverage Summary "Increased Loss Assessment" up to the aggregate amount shown in the Coverage Summary;

for your share of loss assessment charged during the policy period against you by a corporation or association of property owners when the assessment is made as a result of:

- a. An **occurrence** to which the **Personal Liability—Dwelling** would apply;
- b. Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided:
 - (1) The director, officer or trustee is elected by the members of a corporation or association of real property owners; and
 - (2) The director, officer or trustee serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of real property owners.

Regardless of the number of assessments, this is the most we will pay for loss arising out of:

- a. One **occurrence**; or
- b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.

This coverage does not increase our limit of liability.

We will not pay more than \$1,000, of your assessment per unit that results from a deductible in the Insurance purchased by the association of real property owners.

This coverage applies only to loss assessments charged against you as owner or tenant of your

scheduled location.

We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body.

4. Other Payments We Make.

In addition to the limit of liability shown in the Coverage Summary, we pay on your behalf:

- a. The expenses described below for a claim or suit we are obligated to defend:
 - (1) Defense costs incurred at our discretion;
 - (2) Premiums on appeal bonds and bonds to release attachments in any suit we defend; we have no obligation to secure or provide bonds;
 - (3) Up to \$50 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request;
 - (4) Other reasonable expenses (other than loss of earnings) incurred at our request;
 - (5) Expenses incurred by us and costs taxed against any **covered person** in any suit we defend.
- b. Interest accruing after a judgment is entered and before the loss is paid in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.

We are not obligated to defend suits brought against a **covered person** in any country where we are prevented from defending because of laws or other reasons. However, we will pay any expense incurred with our written consent for the **covered person's** defense.

Our obligation to pay the above costs ends when our limit of liability has been exhausted.

LOSSES WE DO NOT COVER

- 1. **Personal Liability and Medical Expense** coverages do not apply to **bodily injury** or **property damage**:

- a. Arising out of the rendering or failure to render a professional service of any nature even if covered by any other policy.

Your Policy

- b. Arising out of any property excluded from coverage by endorsements attached to this policy.
- c. Arising out of the ownership, maintenance, occupancy, renting, loaning, use, entrusting, loading or unloading of any motor vehicles, other than:
- (1) A motorized golf cart when being used to play golf on a golf course, or for travel between the **insured location** and its community golf course for golfing purposes only.
 - (2) A motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and;
 - (a) Not owned by a **covered person**; or
 - (b) Owned by a **covered person** and being used on an **insured location** at the time of the accident.
 - (3) A vehicle or conveyance not subject to motor vehicle registration which is:
 - (a) Being used to service a **covered person's** residence at the time of the accident;
 - (b) Designed for assisting the handicapped; or
 - (c) In dead storage on an **insured location**;
 - (4) **Bodily injury** to a **residence employee** arising out of and in the course of the **residence employees** employment by a **covered person**.
- d. Arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading, or unloading of any watercraft, other than:
- (1) Sailing vessels, with or without auxiliary power, less than 26 feet in length that are owned or rented by a **covered person**;
 - (2) Watercraft powered by one or more outboard motors with less than 26 total horsepower;
 - (3) Watercraft powered by inboard or inboard-outboard motor power of 50 horsepower or less, which are owned or rented to a **covered person**;
 - (4) Any watercraft, which is not:
 - (a) A sailing vessel; and
 - (b) Motor powered;
 that is owned or rented by a **covered person**;
 - (5) Watercraft that you or any **family member** do not own as long as they are not furnished or available for the regular use of any **covered person**;
 - (6) Watercraft that are stored.
- but in no instance will coverage be provided for any watercraft:
- (1) Designated as an airboat, air cushion or similar type of watercraft; or
 - (2) Owned by a **covered person** which is a personal watercraft, meaning a craft propelled by water jet pump engine and designed to be operated by a person or persons sitting, standing or kneeling on the craft.
- This exclusion does not apply to **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by a **covered person**.
- e. Which arises out of the transmission of a communicable disease by any **covered person**.
- f. Arising out of a premises:
- (1) Owned by a **covered person**;
 - (2) Rented to a **covered person**; or
 - (3) Rented to others by a **covered person**;
- that is not an **insured location**. This exclusion does not apply to **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by a **covered person**.

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- g. Arising out of the rental or holding for rental of any part of any premises by a **covered person**.

This exclusion (g.) does not apply:

- (1) To the rental or holding for rental of an **insured location**:
 - (a) On an occasional basis if used only as a residence;
 - (b) In part, unless intended for use as a residence by more than two roomers or boarders; or
 - (c) In part, as an office, school, studio or private garage.
- (2) When the **scheduled location** is a two or more family dwelling and you occupy one part and rent or hold for rental the other part.
- (3) To the rental or holding for rental of a dwelling of four families or fewer, or condominium or cooperative units that are indicated on the Coverage Summary and owned by you.

- h. Intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of one or more **covered persons**. This exclusion applies even if:
- (1) Such **covered person** lacks the mental capacity to govern his or her conduct;
 - (2) Such **bodily injury** or **property damage** is of a different kind or degree than that intended or reasonably expected; or
 - (3) Such **bodily injury** or **property damage** is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such **covered person** is actually charged with or convicted of a crime.

- i. Arising out of:

- (1) The entrustment by a **covered person** to any person; or
- (2) Vicarious liability, whether or not

statutorily imposed, for the actions of a child or minor;

of any watercraft, motor vehicle or trailer which is not covered under **Liability Coverage – Dwelling**.

- j. Arising out of **business** pursuits of you or any **covered person**. This exclusion does not apply to:

- (1) Activities which are used to **non-business** pursuits; or
- (2) Part-time **business** pursuits of any **covered person** who is under 18 years of age.

- k. Arising out of your or any **covered person's** action or failure to act as a director, officer or trustee of an organization, unless:

(1) In a capacity as a director, officer or trustee you or the **covered person**:

- (a) Serve without deriving any income, and
- (b) The organization is charitable, religious or civic non-profit and chartered as such.

- (2) The organization is a corporation or association of real property owners, and in a capacity as director, officer or trustee, you or any **covered person** incurs liability and:

- (a) Is elected by the members of the corporation or association of real property owners; and
- (b) Serves without deriving any income from the exercise of duties which are solely on the behalf of a corporation or association of real property owners.

- l. Arising out of:

- (1) The ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of an aircraft;
- (2) The entrustment by a **covered person** of an aircraft to any person; or

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- (3) Vicarious parental liability, whether statutorily imposed or not, for the actions of a child or minor using an aircraft.

An aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.

This exclusion does not apply to **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by a **covered person**.

- m. Caused directly or indirectly by war, including:

- (1) Undeclared war, civil war, insurrection, rebellion, revolution;
- (2) Warlike act by a military force or military personnel; or
- (3) Destruction or seizure or use for a military purpose;

and including any consequence of any of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

- n. Arising out of the use, sale, manufacture, delivery, transfer, or possession by any person of a Controlled Substance(s) as defined by the Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled Substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.

2. Personal Liability does not apply to:

- a. Liability for your share of any loss assessment charged against all members of an association, corporation or community of property owners, except as provided under **Additional Liability Coverages, 4. Loss Assessment Coverage**.
- b. **Property damage** to property owned by a **covered person**.
- c. **Property damage** to property rented to,

occupied or used by or in the care of any **covered person**.

This exclusion does not apply to **property damage** caused by fire, smoke or explosion.

- d. **Bodily injury** or **property damage** for which a **covered person** under this policy:

- (1) Is also an insured under a nuclear energy liability policy; or
- (2) Would be an insured under that policy but for the exhaustion of its limit of liability.

A nuclear energy liability policy is one issued by:

- (1) American Nuclear Insurers;
- (2) Mutual Atomic Energy Liability Underwriters;
- (3) Nuclear Insurance Association of Canada;

or any of their successors.

- e. Liability under any contract or agreement. However this exclusion (e-) does not apply to written contracts:

- (1) That relate to the maintenance, ownership or use of an **insured location**; or
- (2) Where the liability of others is assumed by a **covered person** prior to an **occurrence**;

unless excluded in 2.a. above or elsewhere in this "DWELLING FIRE" Segment.

- f. Liability from any nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.

- g. **Bodily injury** to any person eligible to receive any benefits:

- (1) Voluntarily provided; or
 - (2) Required to be provided;
- by the **covered person** under any:
- (1) Workers compensation law;

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- (2) Non-occupational disability law; or
- (3) Occupational disease law.
- h. **Bodily injury** to you or any **family member**. This exclusion also applies to any claim or suit brought against any **covered person**;
- (1) To repay; or
- (2) Share damages with;
- another person who may be obligated to pay damages because of **bodily injury** to a **covered person**.
3. **Medical Expense** coverage does not apply to **bodily injury**.
- a. To a **residence employee** which:
- (1) Occurs off the **insured location**, and
- (2) Does not arise out of or in the course of the **residence employee's** employment by any **covered person**.
- b. To any person eligible to receive benefits:
- (1) Voluntarily provided; or
- (2) Required to be provided;
- under any:
- (1) Workers' Compensation law;
- (2) Non-occupational disability law; or
- (3) Occupational disease law.
- c. From any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
- d. To any person, other than a **residence employee of a covered person**, regularly residing on any part of the **insured location**.
- a. Give us or our agent as soon as possible:
- (1) All information you know on the time, place and circumstances of the **occurrence**, and in the case of a crime also tell the police; and
- (2) Identity of claimants, witnesses and **covered persons**.
- b. Forward to us all written material you receive regarding the **occurrence**.
- c. At our request, assist us in:
- (1) Making settlement.
- (2) Conducting suits and attending hearings or trials.
- (3) Securing and giving evidence.
- (4) Enforcing any right of contribution or indemnity against any person or organization who may be liable to a **covered person**.
- (5) If the loss is under the coverage **Goodwill Payments**, within 60 days after the loss:
- (a) Submitting to us a sworn statement of loss; and
- (b) If in a **covered person's** control, showing the damaged property.
- d. You or any other **covered person** shall not, except at your own cost, voluntarily make any payment, assume any obligation or incur any expense. This does not apply to first aid to others.
2. **Duties Of An Injured Person.**
- The injured person shall:
- a. Give us written proof of claim;
- b. Authorize us to obtain medical information and other pertinent records;
- c. As often as we reasonably require submit to physical examination by a physician of our choice;
- d. Not construe payment of medical claims as an admission of liability by a **covered person** or us.

HOW WE SETTLE LIABILITY CLAIMS AND WHAT YOU MUST DO

1. Your Duties After Loss.

After an **occurrence**, you and any other **covered person** under this policy must make sure that all of the following are done. We have no duty to provide coverage under this policy unless there has been full compliance with these duties:

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3. Suit Against Us.

No action can be brought against us unless there has been compliance with the policy provisions.

No action can be brought against us until the obligation of the **covered person** has been determined by final judgment or agreement signed by us.

No person or organization has any right under this policy to bring us into any action to determine the liability of a **covered person**.

GENERAL PROVISIONS – DWELLING

1. The "GENERAL PROVISIONS" is amended as follows:

OTHER INSURANCE – The following exception is added:

Exception:

- a. For Condominium and Cooperative owners – If, at the time of loss, there is other insurance in the name of a corporation or association of property owners covering the same property covered by this policy, this insurance will be excess over the amount recoverable under such other insurance.
 - b. Any insurance we provide with respect to a watercraft that you or any **family member** do not own shall be excess over other valid and collectible insurance.
 - c. This insurance will be excess over any amounts recoverable under coverage required to be provided by any workers' compensation, disability benefits or similar law.
2. The following provisions are added to the "GENERAL PROVISIONS":
 - a. **SUBROGATION**
A **covered person** may waive in writing before a loss all rights of recovery against any person.

If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, a **covered person** must sign and deliver all related papers and cooperate with us.

b. ADDITIONAL INSURED

The definition of "you" and "your" includes the person or organization named in the Coverage Summary as an Additional Insured for the "DWELLING FIRE" Segment, with respect to:

- (1) **Property Coverage – Real Property;**
- (2) **Liability Coverage – Personal Liability;**
and
- (3) **Liability Coverage – Medical Expense;**
but only with respect to the premises associated with that "Additional Insured" in the Coverage Summary.

This coverage extension does not apply to **bodily injury** to an employee arising out of or in the course of the employee's employment by the person or organization.

c. THE LAW

If anything in this policy conflicts with state or local laws, we agree to honor any claim or suit in conformity with the law.

d. CHANGES DURING THE POLICY PERIOD

If there is a change to the information used to develop the premium for this policy, we may adjust your premium. Changes during the policy term may result in a premium increase or decrease.

If a change requires a premium adjustment, we will make the premium adjustment in accordance with our manual rules.

Required Coverages and Amendments

AMENDMENT OF PROPERTY PROVISIONS - NEW YORK

DEFINITIONS

The following is added to the **DEFINITIONS** in the **HOME** Segment and the **DWELLING FIRE** Segment:

Actual Cash Value is calculated as the amount it would cost to repair or replace covered property, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. **Actual cash value** applies to valuation of covered property regardless of whether that property has sustained partial or total loss or damage.

The **actual cash value** of the lost or damaged property may be significantly less than its replacement cost.

For **HOME** and **DWELLING FIRE** Segments, the first sentence in the definition of **Covered Person(s)** is deleted in its entirety and replaced with the following:

Covered Person(s) means you and the following residents of your household living where you reside:

The remainder of the definition remains unchanged.

Under **DEFINITIONS**, the definition of **occurrence** in the **HOME** and **DWELLING FIRE** Segments is deleted and replaced by the following:

Occurrence means:

- a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in **bodily injury** or **property damage**; or
- b. An offense, including a series of related offenses, committed during the policy period, which results in **personal injury**. All losses arising out of such act or series of acts, regardless of the frequency thereof or number of claimants, shall be deemed to arise out of one offense.

For the **SPECIAL-HOME** Segment, including all attached endorsements, any reference to "aggregate

property limit" is deleted and replaced by "property location limit".

Property Location Limit means the sum of the individual limits of insurance for your residence, tangible personal property and other structures respectively for such residence as specified in the Coverage Summary.

PROPERTY COVERAGE - HOME

REAL PROPERTY - LIMIT OF LIABILITY

For **ELITE-HOME** and **DELUXE-HOME** Segments, Provision 1. is deleted and replaced by the following:

1. Payment will not exceed the smallest of:
 - a. The amount that we could reasonably be expected to pay to have the property repaired to its condition immediately prior to the loss;
 - b. The actual cost to replace the real property or any parts of it;
 - c. The aggregate property limit shown in the Coverage Summary for the residence; or
 - d. For other structures on your **residence premises**, 20% of the residence value shown in the Coverage Summary for that location, unless a higher limit for other structures is shown in the Coverage Summary.

For **ELITE-HOME** and **DELUXE-HOME** Segments, Provision 2.a. is deleted and replaced by the following:

- a. Maintained coverage on the real property at 100% of its full replacement cost by paying renewal premium to reflect the then current replacement cost. The current replacement cost of the real property will be based on the residential construction cost index provided to us by Marshall & Swift; and

In the event of a catastrophe loss (a catastrophe is defined as a loss due to an **occurrence** that is experienced by a large number of policyholders and

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Required Coverages and Amendments

where the Property Claims Services, Division of American Insurance Services Group, Inc., has established a catastrophe claim number), articles 1. and 2. of this provision are deleted and replaced by the following:

1. Payment will not exceed the smallest of:

- a. The amount that we could reasonably be expected to pay to have the property repaired to its condition immediately prior to loss; or
- b. The actual cost to replace the real property or any parts of it; or
- c. The property limit shown in the Coverage Summary; or
- d. For other structures on your **residence premises**, 20% of the residence value shown in the Coverage Summary for that location, unless a higher limit for Other Structures is shown in the Coverage Summary.

2. If you have:

- a. Allowed us to adjust the calculated replacement cost of the real property in accordance with the property valuation we make. The current replacement cost of the real property will be based on the residential cost index provided to us by Marshall & Swift; and
- b. Notified us, within 90 days of the start of any alterations to the real property which increases the replacement cost of the real property by 5% or more;

Then, if at the time of loss the dwelling replacement value, indicated in the Coverage Summary, is less than the current replacement cost we will:

- a. Increase the aggregate property limit by the amount required to pay the loss but no more than 25% for Elite or 15% for Deluxe; and
- b. Adjust the policy premium from the time of loss for remainder of the policy term based on the increased aggregate property limit.

For the **SPECIAL-HOME** Segment, Provisions 1. and 2. are deleted in their entirety and replaced by the following:

1. Payment will not exceed the smallest of:

- a. The amount that we could reasonably be expected to pay to have the property repaired to its condition immediately prior to the loss;
- b. The actual cost to replace the real property or any parts of it;
- c. For dwelling -The estimated residence value shown in the Coverage Summary for that particular residence; or
- d. For other structures located on the **residence premises** but physically separated from the dwelling 10% of the estimated residence value shown in the Coverage Summary. This limit is the most we will pay regardless of the number of other structures damaged in the same **occurrence**.

If the Coverage Summary indicates that **Specified Additional Amount of Insurance for Dwelling Coverage** applies, and if you have:

- a. Maintained coverage on the real property at 100% of its full replacement cost by paying renewal premium to reflect the then current replacement cost; and
- b. Notified us within 90 days of the start of any alterations to the real property which increases the replacement cost of the real property by 5% or more;

Then, if at the time of loss the residence value indicated in the Coverage Summary is less than the current replacement cost, we will:

- a. Increase the residence value to equal the current replacement cost of the residence, subject to a maximum increase of 25% of the estimated residence value; and
- b. Adjust the policy premium from the time of loss for the remainder of the policy term based on the increased limit of liability.

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Required Coverages and Amendments

At the time of loss, Other Structures and Tangible Personal Property coverage percentages will not be increased as a result of Specified Additional Amount of Insurance for Dwelling Coverage on your dwelling.

Current replacement cost does not include any additional costs necessary to comply with any ordinance or law that regulates the construction, repair or demolition of the property. The current replacement cost of the real property is based on either:

- a. A recalculation of your home based on information that you provided or on information gathered from an inspection or both; or
- b. A residential cost index applied at each policy anniversary. The index is an estimate of the increased cost of rebuilding or repairing your home and is based on information provided to us by Marshall & Swift and other available information.

TANGIBLE PERSONAL PROPERTY - PROPERTY SPECIAL LIMITS

Under TANGIBLE PERSONAL PROPERTY - PROPERTY SPECIAL LIMITS, the introductory paragraphs are deleted, and replaced by the following:

To keep your premium as low as possible, we have limited the amount we will pay for certain categories of tangible personal property. The limit shown for each numbered category is the most we will pay for that category per loss. If we could pay for the same item under more than one category, we will pay under only the highest applicable category.

If an article covered under any of these categories is separately described and/or specifically insured elsewhere in this policy, and the actual cost of the article is discovered to exceed the amount specifically provided elsewhere, we will in no event pay more for that article than the higher of:

1. The amount specifically provided elsewhere; or
2. The amount available from the applicable limit below, after that limit has been reduced by any

other payments under that category for the same loss.

Only in the SPECIAL-HOME Segment and the DWELLING FIRE Segment, under TANGIBLE PERSONAL PROPERTY - PROPERTY SPECIAL LIMITS:

Category 3. is deleted in its entirety, and replaced by the following:

3. \$1,000 . . . On property at your *residence premises* used in business, but if the *business* property is away from your *residence premises* the most we will pay is \$250.

Category 5. is deleted in its entirety, and replaced by the following:

5. \$1,000 . . . For loss to trading cards, comic books, memorabilia, souvenirs, collectors items and similar articles whose age or history contribute to their value, subject to a maximum amount of \$250 per trading card, comic book or other individual item.

Category 7 is deleted in its entirety, and replaced by the following:

7. \$1,500 . . . For loss by theft of jewelry, watches, precious and semi-precious stones, furs, garments trimmed with fur or consisting primarily of fur.

For the DELUXE- and SPECIAL-HOME Segment and the DWELLING FIRE Segment, Category 10. is added as follows:

\$10,000. . . for loss, other than water damage, to rugs, including, but not limited to, any hand-woven silk or wool rug, carpet, tapestry, wall-hanging or other similar article whose principal value is determined by its color, design, quality of wool or silk, quality of weaving, condition or age.

For the DELUXE-HOME Segment, Category 11. is added as follows:

\$5,000. . . for water damage to rugs, including but not limited to, any hand-woven silk or wool rug, carpet, tapestry, wall-hanging or other similar article whose principal value is determined by its color, design, quality of wool or silk, quality of weaving, condition or

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Required Coverages and Amendments

age unless the loss is not covered under **Property Coverage-Losses We Do Not Cover**.

For the **SPECIAL-HOME** Segment and the **DWELLING FIRE** Segment, Category 11. Is added as follows:

\$2,500. . .for water damage to rugs, including but not limited to, any hand-woven silk or wool rug, carpet, tapestry, wall-hanging or other similar article whose principal value is determined by its color, design, quality of wool or silk, quality of weaving, condition or age unless the loss is not covered under **Property Coverage-Losses We Do Not Cover**.

TANGIBLE PERSONAL PROPERTY - LIMITS OF LIABILITY

For the **SPECIAL-HOME** Segment, Provisions 1. and 2. are deleted in their entirety and replaced by the following:

1. Tangible Personal Property is insured on an actual cash value basis (with deduction for depreciation) unless the Coverage Summary Indicates that **Personal Property Replacement Cost Coverage** applies. When Tangible Personal Property is insured on an actual cash value basis, covered losses for Tangible Personal Property will be settled on an actual cash value basis (with deduction for depreciation), but not exceeding the smallest of:
 - a. The amount that we could reasonably be expected to pay to have the property repaired to its condition immediately prior to the loss;
 - b. The amount that we could reasonably be expected to pay to replace the article with a new one substantially identical to the article lost or damaged;
 - c. The amount specified in the section **Tangible Personal Property - Special Limits**; or
 - d. 50% of the estimated residence value shown in the Coverage Summary.
2. If the Coverage Summary indicates that **Personal Property Replacement Cost Coverage** applies, covered losses will be settled

on a replacement cost basis (without deduction for depreciation) but not exceed the smallest of:

- a. The amount that we could be reasonably be expected to pay to have the property repaired to its condition immediately prior to the loss;
- b. The amount that we could reasonably be expected to pay to replace the article with a new one substantially identical to the article lost or damaged;
- c. The amount specified in **Tangible Personal Property - Special Limits**; or
- d. 70% of the estimated residence value shown in the Coverage Summary.

Personal Property Replacement Cost Coverage will not apply to property that was obsolete or unusable for the originally intended purpose because of age or condition prior to loss.

At our option, we may repair or we may replace with a new item of similar or like kind and quality.

If the replacement cost for the entire loss under this **SPECIAL-HOME** Segment is more than \$3,000, we will pay no more than the actual cash value for the loss or damage until actual repair or replacement is complete.

ADDITIONAL PROPERTY COVERAGES

4. **Debris Removal** is deleted from the **HOME** Segment in its entirety, and it is replaced by the following:

4. Debris Removal.

We will pay your reasonable expense for the removal of:

- a. Debris of covered property for covered losses; or
- b. Ash, dust or particles from a volcanic eruption that has caused direct loss to a covered building or covered property contained in the building.

This expense is included in the limit of liability that applies to the damaged property. If the

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Required Coverages and Amendments

amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 4% of that limit of liability is available for debris removal expense.

We will also pay your reasonable expense, up to \$500, for the removal from your **residence premises** of:

- a. Your tree(s) felled by the peril of Windstorm or Hail;
- b. Your tree(s) felled by the peril of Weight of Ice, Snow or Sleet; or
- c. A neighbor's tree(s) felled by a Tangible Personal Property - Covered Peril;

provided the tree(s):

- a. Damage(s) a covered structure; or
- b. Block(s) a driveway on the residence premises so that vehicles cannot pass; or
- c. Block(s) a ramp or driveway for handicapped persons' access to a structure; or
- d. Prohibit(s) safe entry into a covered structure through any of its normal entryways.

The \$500 limit is the most we will pay in any one loss regardless of the number of fallen trees.

Collapse, Items 11 for **DELUXE-HOME** and **ELITE-HOME** Segments and 8. for **SPECIAL-HOME** Segment and 7. for **DWELLING FIRE** Segment are deleted in their entirety and replaced by the following:

Collapse.

- a. With respect to this Additional Coverage:
 1. Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.
 2. A building or any part of a building that is in danger of falling down or caving in is not considered to be in state of collapse.

3. A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building.

4. A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

- b. We insure for direct physical loss to covered real property and tangible personal property involving collapse of a building or any part of a building if the collapse was caused by one or more of the following:

1. Decay that is hidden from view, unless the presence of such decay is known to you prior to collapse;
2. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to you prior to collapse;
3. Weight of contents, equipment, animals, or people;
4. Weight of rain which collects on a roof;
5. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.
6. A Real Property covered peril for **ELITE-HOME** Segment; and Tangible Personal Property covered peril for **SPECIAL-HOME** Segment, **DELUXE-HOME** Segment, and **DWELLING FIRE** Segment.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items (1), (2), (3), (4) and (5) unless the loss is a direct result of the collapse of a covered building or any part of a covered building.

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Required Coverages and Amendments

This coverage does not increase the limit of the liability applying to the damage covered property.

Credit Cards, Fund Transfer Cards, Forgery and Counterfeit Money, Items 12. in the **SPECIAL-HOME** Segment and 15. in the **ELITE** and **DELUXE-HOME** Segments, is modified as follows:

The following paragraph is deleted:

"We do not cover use of a credit card or fund transfer card if a **covered person** has not complied with all the terms and conditions under which the cards are issued."

LOSSES WE DO NOT COVER

1. Under **1. Real Property and Tangible Personal Property** in the **ELITE-HOME** Segment, exclusion f. is amended as follows:

- a. Part (1) is deleted and replaced by the following:

- (1) Flood, surface water, sewage, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, whether or not driven by wind.

In the event of a catastrophe loss (a catastrophe is defined as a loss due to an **occurrence** that is experienced by a large number of policyholders and while the Property Claims Services, Division of American Insurance Services Group, Inc., has established a catastrophe claim number), the following provisions apply to **Additional Living Expense** and **Building Ordinance Increased Costs**.

1. **Additional Living Expense**, the following is added to article 1.a.

This coverage is limited to 15% of the aggregate property limit shown in your Coverage Summary.

In the **DELUXE-HOME**, **SPECIAL-HOME** and **DWELLING FIRE**- Segments, the one-year limitation for this coverage is eliminated.

6. **Building Ordinance Increased Costs**, in the **ELITE** and **DELUXE-HOME** Segments, the following is added:

This coverage is limited to 15% of the aggregate property limit shown in your Coverage Summary.

Under **Losses We Do Not Cover**, the following item is added under **1. Real Property and Tangible Personal Property** of the **ELITE-HOME** Segment; and item **1. Real Property and Tangible Personal Property**, paragraph b. in the **DELUXE-HOME**, **SPECIAL-HOME** and **DWELLING FIRE** Segments is deleted and replaced by the following:

Caused by, resulting from, contributed to or aggravated by earthquake; landslide; mudflow; earth sinking, rising or shifting; movement resulting from improper compaction, site selection or any other external forces; volcanic eruption meaning the eruption, explosion or effusion of a volcano; unless direct loss by:

1. Fire;
2. Explosion other than explosion of a volcano; or
3. Breakage of glass or safety glazing material ensues, and then we will pay for only the ensuing loss.

This exclusion does not apply to loss by theft.

In the **SPECIAL-HOME** Segment or **DWELLING FIRE** Segment, under **Losses We Do Not Cover**, **2. Real Property**, exclusions c. and d. are deleted in its entirety and replaced by the following:

- c. Caused by continuous or repeated seepage over a period of weeks, months or years, of water, steam or fuel:
 - (1) From a plumbing, heating, air conditioning or automatic fire protection system, or from within a domestic appliance; or
 - (2) From within or around any plumbing fixtures, including but not limited to shower stalls, shower baths, tub installations, sinks or other fixtures designed for use of water or steam.
- d. Caused by or consisting of the following:
 - (1) Wear and tear, aging, marring, scratching or deterioration;

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Required Coverages and Amendments

- (2) Inherent vice, latent defect, electrical or mechanical breakdown or failure;
- (3) Rust or other corrosion, mold, fungi, wet or dry rot or toxic bacteria;
- (4) Smog, smoke from agricultural smudging or industrial operations;
- (5) Settling, shrinking, bulging, or expansion including resultant cracking, of pavements, patios, foundations, walls, floors, roofs or ceilings;
- (6) Birds, vermin, insects, or rodents; or animals kept or owned by a covered person;
- (7) Pressure from or presence of tree, shrub or plant roots; or growth of any tree, shrub, plant or lawn, whether such growth is above or below the surface of the ground, affecting:
 - a. pavement, patios, or walls not part of the dwelling; or
 - b. plumbing systems, including outdoor pipes.
- (8) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a **Tangible Personal Property - Covered Peril**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste whether man-made or natural. Waste includes materials to be recycled, reconditioned or reclaimed.

If any of these, other than (7), cause water not otherwise excluded to escape from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, we cover loss caused by the water. We also cover the cost of tearing out and replacing any part of a

building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which this water escaped.

Under 1. Real Property and Tangible Personal Property in the ELITE-HOME Segment, and under 2. Real Property in the DELUXE-HOME Segment, exclusion d. is deleted in its entirety and replaced by the following:

We do not insure for loss:

d. Caused by or consisting of the following:

- (1) Wear and tear, aging, marring, scratching or deterioration;
- (2) Inherent vice, latent defect, electrical or mechanical breakdown or failure;
- (3) Rust or other corrosion, mold, fungi, wet or dry rot or toxic bacteria;
- (4) Smog, smoke from agricultural smudging or industrial operations;
- (5) Settling, shrinking, bulging, or expansion including resultant cracking, of pavements, patios, foundations, walls, floors, roofs or ceilings;
- (6) Birds, vermin, insects, or rodents; or animals kept or owned by a covered person;
- (7) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a **Tangible Personal Property - Covered Peril**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste whether man-made or natural. Waste includes materials to be recycled, reconditioned or reclaimed.

If any of these cause water not otherwise excluded to escape from a plumbing, heating, air conditioning or automatic fire

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Required Coverages and Amendments

protective sprinkler system or household appliance, we cover loss caused by the water. We also cover the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which this water escaped.

HOW WE SETTLE PROPERTY CLAIMS AND WHAT YOU MUST DO

In the **HOME** Segment and **DWELLING FIRE** Segment, the following changes apply to item 4. **Your Duties After Loss:**

Paragraphs a. and b. are deleted and replaced by the following:

- a. Tell us or our agent as soon as reasonably possible;

Failure to provide us or our agent with notice as soon as reasonably possible as required under this policy shall not invalidate any claim made by you or any **covered person**, unless the failure to do so is prejudicial to us. However, late notice made by you or any **covered person**, whether prejudicial to us or not, will not invalidate any claim if it can be shown that it was not reasonably possible to give notice and that notice was given as soon as was reasonably possible thereafter.

- b. In case of crime, also tell the police.

Paragraph d. in the **HOME** Segment and paragraph c. in the **DWELLING FIRE** Segment is deleted and replaced by the following:

- d. **HOME** Segment and c. **DWELLING FIRE** Segment Protect the property from further damage, and keep a record of the expenses;

Paragraph f. in the **HOME** Segments and e. in the **DWELLING FIRE** Segment is deleted and replaced by the following:

- f. **HOME** Segment and e. **DWELLING FIRE** Segment.

- (1) Show us or our representatives the damaged property as often as necessary.
- (2) As often as we reasonably require;
 - (i) Provide us with records and documents we request and permit us to make copies; and
 - (ii) Submit to examination under oath and subscribe the same.

Item 6. Suit Against Us.

This provision is deleted in its entirety and replaced by the following:

6. Suit Against Us.

No action can be brought unless the policy provisions have been complied with and the action is started:

- a. Within two years after the date of loss; but
- b. Not until 30 days after the proof of loss has been filed and the amount of loss has been determined.

However, the two-year period is extended by the number of days between the date the proof of loss is submitted and the date the claim is submitted in whole or in part.

Item 8. Who We Pay.

This provision is deleted and replaced by the following:

8. Who We Pay.

We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment.

Losses will be payable 60 days after we receive your proof of loss and:

- a. Reach an agreement with you;
- b. There is an entry of a final judgment; or
- c. There is a filing of an appraisal award with us.

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Required Coverages and Amendments

LIABILITY COVERAGE - HOME

PERSONAL LIABILITY - INSURING AGREEMENT

In the **SPECIAL, DELUXE** and **ELITE-HOME** Segments, and the **DWELLING FIRE** Segment

The last paragraph 2., is deleted and replaced by the following:

2. Provide a defense at our expense by counsel of choice. This applies even if the claim or suit is groundless. We may make an investigation and settle any claim or suit that we decide is appropriate.

ADDITIONAL LIABILITY COVERAGES

In the **HOME** Segment, **ADDITIONAL LIABILITY COVERAGES, 3., Workers' Compensation**, is deleted in its entirety and replaced by the following language:

If you are required by your state statutes to provide Workers' Compensation Insurance for your **residence employees**, we will make any required statutory payments. Any amounts payable under this coverage shall be reduced by any amounts paid or payable under any other section of this policy.

This coverage will not apply if you or another **covered person** in your household has a workers' compensation policy that covers employees working at, in or about your **residence premises**.

This provision does not constitute voluntary election of coverage under New York Workers' Compensation Law.

The following definition of **residence employee** applies only to this Item 3., **Workers' Compensation**:

Residence employee means your employee, or the employee of any **covered person** in your household who is engaged at, in, or about your **residence premises** in employment of less than 40 hours per week.

Other Payments We Make, Item 5. in the **HOME** Segment and Item 4. in the **DWELLING FIRE** Segment, is amended as follows:

Paragraph a.(5) is deleted and replaced by the following:

- (5) Expenses incurred by us and all costs taxed against a **covered person** in any suit we defend.

The following sentence is deleted: "Our obligation to pay the above costs ends when our limit of liability has been exhausted."

LOSSES WE DO NOT COVER

In the **SPECIAL, DELUXE** and **ELITE-HOME** Segments, and the **DWELLING FIRE** Segment, Item 1.j. is deleted in its entirety and replaced by the following:

- j. Arising out of **business** pursuits of you or any covered person. This exclusion does not apply to ~~part-time~~ **business** pursuits of **any covered person**, who is under 18 years of age.

Item 1.h. is deleted in its entirety and replaced by the following:

- h. which is expected or intended by the **covered person**.

For **SPECIAL, DELUXE** and **ELITE-HOME** Segments, and the **DWELLING FIRE** Segment, the following items are added under Exclusion 1:

- o. Arising out of the discharge, dispersal, release or escape of oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank. This exclusion does not apply when the discharge, dispersal, release or escape is sudden and accidental.

For **SPECIAL, DELUXE** and **ELITE-HOME** Segments, the following items are added under Exclusion 2:

- h. Any liability imposed upon any **covered person** by any governmental authority arising out of the discharge, dispersal, release or escape of oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank. This exclusion does not apply when the discharge, dispersal, release or escape is sudden and accidental.

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Required Coverages and Amendments

- i. Any loss, cost, or expense arising out of any request, demand, or order that any **covered person** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to or assess the effects of the discharge, dispersal, release or escape of oil, fuel oil, kerosene, liquid propane, or gasoline intended for, or from, a storage tank. This exclusion does not apply when the discharge, dispersal, release or escape is sudden and accidental.

For **DWELLING FIRE** Segment, the following items are added under Exclusion 2:

- i. Any liability imposed upon any **covered person** by any governmental authority arising out of the discharge, dispersal, release or escape of oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank. This exclusion does not apply when the discharge, dispersal, release or escape is sudden and accidental.
- j. Any loss, cost, or expense arising out of any request, demand, or order that any **covered person** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to or assess the effects of the discharge, dispersal, release or escape of oil, fuel oil, kerosene, liquid propane, or gasoline intended for, or from, a storage tank. This exclusion does not apply when the discharge, dispersal, release or escape is sudden and accidental.

Under **LIABILITY COVERAGE - HOME**, Losses We Do Not Cover, in the **HOME** Segment, exclusion 4. is deleted, and replaced by the following:

4. **Personal Injury** does not apply to:
 - a. Injury caused by a violation of a law or ordinance by, or with the knowledge or the expressed or implied consent of a **covered person**;
 - b. Injury sustained by any person as a result of an offense directly or indirectly related to the acts of a person in the employment of a **covered person**;

- c. Injury arising out of or in connection with a **business** engaged in by a **covered person**. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the **business**;

- d. Civic or public activities performed for pay by any **covered person**;

- e. Injury arising out of:
 - (1) Oral or written publication of material, if done by or at the direction of any covered person with knowledge of its falsity; or
 - (2) Discrimination because of race, creed, color, sex, sexual preference, religion, age or national origin.

Injury to you or a **covered person** within the meaning of part a. or b. of the **covered person** definition.

- g. Liability arising out of a premises:
 - (1) Owned by a **covered person**;
 - (2) Rented to a **covered person**; or
 - (3) Rented to others by a **covered person**;
 that is not an **insured location**.

HOW WE SETTLE LIABILITY CLAIMS AND WHAT YOU MUST DO

In the **HOME** Segment and **DWELLING FIRE** Segment, the following changes apply:

Item 1. Your Duties After Loss.

The first paragraph and subparagraph a. are deleted and replaced by the following.

1. Your Duties After Loss.

In case of an **occurrence**, the **covered person** or someone acting for the **covered person** will perform the following duties that apply. You will help us by seeing that these duties are performed. Any written notice given by any

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Required Coverages and Amendments

claimant to us or any of our agents in this state containing particulars sufficient to identify the **covered person**, shall be deemed notice to us.

- a. Give written notice to us or any of our agents in this state as soon as is possible, which sets forth:

- (1) The identity of the policy and **covered person**;
- (2) Reasonably available information on the time, place and circumstances of the **occurrence**; and
- (3) Names and addresses of any claimants and witnesses.

Failure to provide us or our agent with notice as soon as reasonably possible as required under this policy shall not invalidate any claim made by you, any **covered person**, an injured person, or any other claimant, unless the failure to do so is prejudicial to us. However, late notice made by you, any **covered person**, an injured person or any other claimant, whether prejudicial to us or not, will not invalidate any claim if it can be shown that it was not reasonably possible to give notice and that notice was given as soon as was reasonably possible thereafter.

Item 2. Duties Of An Injured Person.

Paragraph a. is deleted and replaced by the following:

- a. Give us or any of our agents in this state written proof of claim, under oath if required, as soon as reasonably possible;

Failure to provide us or our agent with written proof of claim as soon as reasonably possible as required under this policy shall not invalidate any claim made by you, any **covered person**, an injured person or any other claimant, unless the failure to do so is prejudicial to us. However, late notice made by you, any **covered person**, an injured person or any other claimant, whether prejudicial to us or not, will not invalidate any claim if it can be shown that it was not

reasonably possible to give notice and that notice was given as soon as was reasonably possible thereafter.

In the HOME Segment and DWELLING FIRE Segment, Item 3. Suit Against Us is replaced with the following:

3. Suit Against Us.

No action can be brought against us unless there has been compliance with the policy provisions.

No action can be brought against us until the obligation of the **covered person** has been determined by final judgment or agreement signed by us.

No person or organization has any right under this policy to bring us into any action to determine the liability of a **covered person**.

If we have disclaimed liability or denied coverage based on failure to provide timely notice, then the injured person or other claimant may maintain an action or suit against us provided that:

- a. The suit or action brought against us is solely on the question of late notice; and
- b. We or a **covered person** have not, within 60 days of the disclaimer of liability or denial of coverage, initiated an action to declare the rights of the parties under the policy and named the injured person or other claimant as a party to the action.

GENERAL PROVISIONS

TERMINATION: The Cancellation and Nonrenewal sections in the **GENERAL PROVISIONS** are deleted and replaced by the following when a HOME or DWELLING FIRE Segment is canceled or nonrenewed.

3. TERMINATION

Cancellation.

- a. You may cancel this policy at any time by:
- (1) Returning the policy to us; or
 - (2) By giving us advance written notice of the date cancellation of the policy,

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Required Coverages and Amendments

HOME Segment or DWELLING FIRE Segment is to take effect.

- b. We may cancel by mailing to you at the address shown in the Coverage Summary:
 - (1) At least 15 days notice of cancellation when you have not paid the premium; or
 - (2) At least 30 days notice prior to the proposed cancellation date in all other cases.
- c. After this **HOME Segment or DWELLING FIRE Segment** has been in effect for 60 days or more, or at any time if it is a renewal with us we may cancel only for one or more of the following reasons:
 - (1) Non-payment of premium;
 - (2) Conviction of a crime arising out of acts increasing the hazard insured against;
 - (3) Discovery of fraud or material misrepresentation in obtaining the policy or in presentation of a claim there under;
 - (4) Discovery of willful or reckless acts or omissions increasing the hazard insured against;
 - (5) Physical changes in the property insured occurring after issuance or last anniversary date of the **HOME Segment or DWELLING FIRE Segment** which result in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the **HOME Segment or DWELLING FIRE Segment** was issued or last voluntarily renewed; or
 - (6) A determination by the Superintendent of Insurance that the continuation of the **HOME Segment or DWELLING FIRE Segment** would place us in violation of the New York Insurance Laws.
- d. When the property covered by this policy is subject to the Anti-Arson Application in accordance with New York Insurance

Department Regulation No. 96, the following provisions are added:

If you fail to return the completed, signed and affirmed anti-arson application to us:

- (1) Or our broker or agent within 45 days of the effective date of a new policy, we will cancel the entire policy by giving 20 days written notice to you and to the mortgage holder shown in the Coverage Summary.
- (2) Before the annual renewal date of any policy, we will cancel the policy by giving written notice to you and to the mortgage holder shown in the Coverage Summary at least 15 days before the effective date of cancellation.

e. If we have the right to cancel, we may, instead of canceling the **HOME Segment or DWELLING FIRE Segment**, amend the limits of liability or reduce coverage not required by law. If we take this action, we will notify you by mail at least 20 days prior to the date of such change.

Nonrenewal

- a. We will not refuse to renew or condition our renewal of this **HOME Segment or DWELLING FIRE Segment** except as allowed by the laws of the State of New York.
- b. The conditions may include, but are not limited to, amending the limits of liability or reducing coverage not required by law.
- c. If we take this action, we will notify you by mail at least 45 days, but not more than 60 days prior to the expiration date of this **HOME Segment or DWELLING FIRE Segment**. Proof of mailing shall be sufficient proof of notice.
- d. Delivery of such written notice by us to you at the mailing address shown in the Coverage Summary or at a forwarding address shall be equivalent to mailing.

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Required Coverages and Amendments

OTHER INSURANCE: The following exception is added:

- d. If a loss covered by this insurance involving a **residence employee**, in accordance with the Workers' Compensation law of New York, is also covered by other insurance, we will not pay more than our share of benefits and costs. The shares of all applicable insurance will be equal until the loss is paid.

Under **GENERAL PROVISIONS**, the following provisions are added:

2. e. What Law Will Apply

This policy is issued in accordance with the laws of New York and covers property or risks principally located in New York. Subject to the following paragraph, the laws of New York shall govern any and all claims or disputes in any way related to this policy.

If a covered loss to property, or any other **occurrence** for which coverage applies under this policy happens outside New York, claims or disputes regarding that covered loss to property, or any other covered **occurrence** may be governed by the laws of the jurisdiction in which that covered loss to property, or other covered **occurrence** happened, only if the laws of that jurisdiction would apply in the absence of a contractual choice of law provision such as this.

2. f. Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard and decided only in a state or federal court located in New York. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or otherwise related to this policy, shall be brought, heard and decided only in a state or federal court located in New York, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to property, or any other **occurrence** for which coverage applies under this policy happens outside New York, lawsuits regarding that covered loss to property, or any other covered **occurrence** may also be brought in the judicial district where that covered loss to property, or any other covered **occurrence** happened.

Nothing in this provision, **Where Lawsuits May Be Brought**, shall impair any party's right to remove a state court lawsuit to a federal court.

2. g. Arbitration

Any claim or dispute in any way related to this policy, by a **covered person** against **us** or **us** against a **covered person**, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

- (1) no arbitrator shall have the authority to award punitive damages or attorney's fees;
- (2) neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
- (3) no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

All other policy terms and conditions apply.

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FILED: ERIE COUNTY CLERK 04/22/2015 01:49 PM

INDEX NO. 805175/2015

NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 04/22/2015

EXHIBIT “B”

602-000-0000

Robert Gurbicki



encompassinsurance.com

PO Box 5000
Glens Falls, NY 12801-9455

Glenn Webster, FCLS

Special Investigations

Telephone (518) 761-4303
(800) 262-1145 x14303

Facsimile (866) 253-8794
Internet glenn.webster@encompassins.com

December 23, 2013

DENNIS DANDREA
1691 Girdle Rd
Elma, NY 14059

Claim Number: Z6213681
Date of Loss: 04/27/2013
Location of Loss: Lancaster, NY
Policyholder: Dennis Dandrea
Policy Number: US 261428701
Policy Term: 02/19/2013 – 02/19/2014
Insuring Company: Encompass Insurance Company of America

Dear Dennis Dandrea:

You are hereby advised that Encompass Insurance Company of America has carefully reviewed the facts and circumstances surrounding the alleged loss of April 27, 2013 at 6216 Broadway, Lancaster, NY. As a result of this investigation, we are denying your claim under the policy because coverage for such claim is void due to:

1. Your intentional concealment and/or misrepresentation of material facts and circumstances concerning your ownership of the residence, documents supporting your claim, and the nature and extent of your claims. *Son is Partner*
2. Your failure to fully comply with policy conditions as listed under **Your Duties After Loss**. We have requested supporting documentation and items from you and, to date, most of the items have not been sent to Encompass.
3. You have falsely sworn as to material issues in this case.

As you have breached your contract duties, Encompass Insurance is denying your claim and denies coverage to you for this loss.

We refer your attention to your USP Deluxe Policy document, Dwelling Fire coverage, G-18542-A wherein it states:

HOW WE SETTLE PROPERTY CLAIMS AND WHAT YOU MUST DO...

4. Your Duties After Loss.

You agree to see that the following things are done after a loss. We have no duty to provide coverage under this policy unless there has been full compliance with these duties:

- a. Give prompt notice to us or our agent.



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- b. Notify the police in case of loss by theft.
- c. Protect the property from further damage. If repairs to the property are required, you must:
 - (1) Make reasonable and necessary repairs to protect the property; and
 - (2) Keep an accurate record of repair expenses.
- d. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory.
- e. As often as we reasonably require:
 - (1) Show the damaged property before its repair or disposal except as provided in 4.c. above;
 - (2) Provide us with records and documents we request and permit us to make copies; and
 - (3) Submit to examination under oath, while not in the presence of any other covered person and sign the same.
- f. Allow us to take samples of damaged and undamaged property for inspection, testing and analysis.
- g. Send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - (1) The time and cause of loss;
 - (2) The interest of the covered person and all others in the property involved and all liens on the property;
 - (3) Other insurance which may cover the loss;
 - (4) Changes in title or occupancy of the property during the term of the policy;
 - (5) Specifications of damaged property and detailed repair estimates;
 - (6) The inventory of damaged personal property described in 4.e., above;
 - (7) Receipts for Additional Living Expenses incurred and records that support the Fair Rental Value Loss; and
 - (8) If the loss is under **Credit Cards, Fund Transfer Cards, Forgery and Counterfeit Money Coverage**, submitting evidence or affidavit stating the amount and the cause of loss.
- h. Cooperate with us in the investigation or settlement of the claim.

* * * *

We also refer your attention to the following policy language in your Deluxe Package Policy, Amendment of General Provisions— New York, Form G-115368-A Ed. 08-95, wherein it states:

10. Concealment Or Fraud

We do not provide coverage for a **covered person** who has, whether before or after a loss:

- a. Intentionally concealed or misrepresented any material fact or circumstance; or
- b. Engaged in fraudulent conduct.



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* * * *

As amended by Form G-20614-G Ed. 05-09, your policy also contains a suit limitation which states:

6. Suit Against Us.

No action can be brought unless the policy provisions have been complied with and the action is started:

- a. Within two years after the date of loss; but
- b. Not until 30 days after the proof of loss has been filed and the amount of loss has been determined.

However, the two-year period is extended by the number of days between the date the proof of loss is submitted and the date the claim is submitted in whole or in part.

With this letter, Encompass Insurance Company of America does not waive, nor does it intend to waive any of the terms, provisions, conditions, limitations or exclusions of its Policy Number US 261428701 nor its rights or defenses under the policy or law.

In accordance with the laws of New York State, the Insurance Department Regulation 64, we are required to advise you of the following. "Should you wish to take this matter up with the New York State Insurance Department, you may file with the Department either on its website at www.ins.state.ny.us/complhow.htm or you may write to or visit: the Consumer Services Bureau, New York State Insurance Department, at: 25 Beaver Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; 200 Old Country Road, Suite 340, Mineola, NY 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202."

We expressly reserve all of the rights and defenses afforded under this policy of insurance and do not in any way waive any rights or defenses, which the insurance company may have.

Sincerely,

Glenn Webster, JCLS

CC: File

Sent by both Regular Mail and Certified Mail, Tracking # 7012 2210 0000 9407 4225.

Attachment: Credit Report Denial to Insured, Form FC31988